SUPREME COURT U.S.
FILED

No. 09-550 OCT 29 2009

In The
Supreme Court of the United States

JOSEPH A. FESSLER and ANN FESSLER, his wife,

Petitioners,

v.

KIRK SAUER COMMUNITY DEVELOPMENT CITY OF WILKES-BARRE; RICHARD GELHARD, Ex Deputy Executive Director - Wilkes-Barre; LEWIS ATTORDO; JOHN G. BRAVACOS, Relocation Area Director, Department of Housing and Urban Development; PAUL CAIN, Ex Area Director of Housing and Director of Housing and Urban Development; ALPHONSO JACKSON, Secretary of Housing and Urban Development,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

JOSEPH A. FESSLER
ANN FESSLER
20 Solomon Street
Ashley, Pennsylvania 18706
Telephone: (570) 826-0060

QUESTIONS PRESENTED

WHY REDEVELOPMENT AUTHORITY REFUSED TO PAY ME AND MY WIFE ANN FESSLER RELOCATION PAYMENT. FAIL TO INFORM US OF RIGHTS AND BENEFITS UNDER HOUSING AND URBAN DEVELOPMENT RELOCATION MANUAL.

WHY MY LAWYER AND REDEVELOPMENT LAWYER NEVER BROUGHT THE QUESTION OF RELOCATION PAYMENT UP IN COURT.

WHY WE HAD TO APPEAL OURSELVES TO REDEVELOPMENT AUTHORITY HOUSING AND URBAN DEVELOPMENT, PHILADELPHIA, PETITION TO LUZERNE COUNTY COURT, MIDDLE DISTRICT COURT, COURT OF APPEALS. NO COURT OR ATTORNEYS WILL HANDLE IT FOR US. AREA DIRECTOR PAUL CAIN OF PHILADELPHIA SAID I COULD TAKE IT TO COURT JUDICIAL REVIEW THROUGH THE COURTS AFTER I FILED AN APPEAL BY THE GRIEVANCE PROCEDURES RELATING TO CLAIMS AND PAYMENTS. NO COURT WILL HANDLE IT.

WHY WAS I GIVEN THE NAME OF JOSEPH FESSLER RENTALS OR FESSLER RENTALS WHEN THEY PUT IT ON RELOCATION PAPERS WHEN THERE IS NO SUCH NAME. THIS WAS GIVEN TO ME.

QUESTIONS PRESENTED – Continued

WHY LEWIS ATTORDO, RELOCATION SPECIALIST, NEVER INFORMED MY WIFE ANN FESSLER ABOUT WHY HE NEVER INFORMED HER ABOUT ANY RELOCATION BENEFITS AND HER NAME SHOULD APPEAR ON ALL RELOCATION PAPERS BECAUSE SHE IS PART OWNER.

AFTER ALL JUDGES, AND COURTS, U.S. ATTORNEY, WILKES-BARRE REDEVELOPMENT AUTHORITY GOT THE LETTER FROM PAUL CAIN WHICH I SUBMITTED TO THEM ON ALL MY LAWSUITS. THEY ALL FAILED TO HONOR THIS LETTER DATED JANUARY 15, 1976. GIVEN ME PERMISSION JUDICIAL REVIEW THROUGH THE COURTS. THEY ALL RECEIVED MANY DOCUMENTS FROM ME THE HOUSING AND URBAN DEVELOPMENT, HANDBOOK REGARDING WHAT BENEFITS I AM ENTITLED TO.

WHY THE JUDGES AND COURTS FAIL TO HONOR WHAT I AM ENTITLED TO.

DO ALL JUDGES, COURTS, U.S. ATTORNEY, WILKES-BARRE REDEVELOPMENT AUTHORITY HAVE A COPY OF HOUSING AND URBAN DEVELOPMENT (RELOCATION HANDBOOK OR MANUAL) WHICH COVERS EMINENT DOMAIN LAWS. THIS SAID THE CASES SHOULD BE SIMPLE CASES AND HANDLED QUICKLY WITHOUT LEGAL HARASSMENT BY THE COURTS.

QUESTIONS PRESENTED – Continued

WHY DID THE SAME JUDGE CONBOY HANDLE THREE OF MY CASES AND COME UP WITH THE SAME REASON FOR REJECTING THEM. AND WHY HE HAD MY CASE TRANSFERRED TO LUZERNE COUNTY STATE COURT, THIRD CASE.

IS IT TRUE IF VIOLATE THERE RELOCATION TO PERSONS LIKE THE FESSLERS WILL LOSE THE FUNDING AND SANCTION FOR NOT CARRYING OUT THE OBLIGATIONS. THIS IS REGARDING WILKES-BARRE REDEVELOPMENT.

WHY IS COMMUNITY DEVELOPMENT TRYING TO SANCTION ME FOR OVER $5000.00 FOR BRINGING MY CASE UP SO MANY TIMES. THEY CAUSED IT AND THE U.S. ATTORNEY FOR NOT ENDING IT. LIKE THEY ARE LEGALLY SUPPOSED TO. THIS IS THE REASON I'VE BEEN TURNED SO MANY TIMES.

DID PAUL CAIN, EX AREA DIRECTOR OF HOUSING AND URBAN DEVELOPMENT, PUT OUT A PHONY LETTER THAT I COULD TAKE MY CASE FOR JUDICIAL REVIEW BY THE COURTS. THIS MEANS FEDERAL OR STATE COURTS. WHY NOBODY WANTS TO GIVE ME MY DAY IN COURT.

WHY WASN'T I PAID $25,000 IN RENT, THE BOOKLET PUT OUT BY COMMUNITY DEVELOPMENT STATES THEY WOULD PAY THE LANDLORD RENT UNTIL LAST TENANT WAS MOVED

QUESTIONS PRESENTED – Continued

OUT. LAST TENANT WAS THERE FOR OVER TWO YEARS AND I NEVER RECEIVED JUST COMPENSATION FOR THAT LENGTH OF TIME.

THE REASON WHY THE COURT TURNED ME DOWN WAS THAT I HAD LACK OF JURISDICTION. FEDERAL PEOPLE ARE INVOLVED IN THIS MATTER. THAT'S WHY I AM BRINGING THIS CASE TO FEDERAL COURT. THAT IS WHY IT SHOULD BE HEARD IN FEDERAL COURT.

WHY THIS CASE WAS NOT HEARD IN 1980 BECAUSE I HAD JURISDICTION THEN.

WHY HOUSING AND URBAN DEVELOPMENT FAILED TO OVERSEE THE OPERATION WILKES-BARRE REDEVELOPMENT AUTHORITY COMPLY WITH TITLE VI OF CIVIL RIGHTS ACT OF 1964 AND TITLE VIII OF CIVIL RIGHTS ACT OF 1968 ACCORDING TO HUD HANDBOOK.

WHY MY CASE HAS BEEN IN THE COURT SO LONG IS BECAUSE THEY REFUSE TO JUDICIAL REVIEW STATE FAIR IMPARTIAL CONSIDERATION OF HIS CLAIM ON ITS MERITS UPON EXHAUSTION OF SUCH ADMINISTRATIVE REMEDIES. ALSO SECTION 201 OF THE ACT FAIR AND EQUITABLE TREATMENT IN ORDER THAT THE DISPLACED PERSON "NOT SUFFER DISPROPORTIONATE INJURIES AS A RESULT OF PROGRAMS DESIGNED FOR THE BENEFIT OF

QUESTIONS PRESENTED – Continued

PUBLIC AS A WHOLE." THAT IS WHY THE COURTS HAVE NOT LIVED UP TO THEIR OBLIGATIONS.

WHY IS SO MUCH CASE LAW WRITTEN BY THE JUDGES WHEN THERE IS NO OTHER CASE LIKE MY CASE IN THE BOOKS. MOVING MY TENANTS OUT ARBITRARILY TELLING THEM NOT TO PAY ME RENT, THEREBY FORCING ME OUT OF BUSINESS.

CITY OF WILKES-BARRE REDEVELOPMENT AUTHORITY GAVE MY TENANT THE NAME OF ZATCOFF, INC. t/a KEYSTATE BAKERY WHEN THERE IS NO SUCH NAME. THIS WAS ON THE DECLARATION OF TAKE THE M&E REAL ESTATE OF $4100.00 MAKING IT TO SEPARATE APPRAISALS GIVING IT TO MY TENANT WHEN THEY ARE NOT THE OWNER. TOOK TO FEDERAL COURT THEY DID NOTHING ABOUT IT. THEY ARE GOOD AT MAKING FALSE NAMES UP.

WHY THE COURTS, REDEVELOPMENT LAWYERS, U.S. ATTORNEY, WONT TAKE ANY ACTION AGAINST REDEVELOPMENT IS BECAUSE THEY WILL LOSE THEIR FUNDING AND SANCTION FOR VIOLATING THE FESSLERS' ENTITLEMENT FOR RELOCATION BENEFITS BY HOUSING AND URBAN DEVELOPMENT BUT HUD IS ALSO INVOLVED IN THIS MATTER ACCORDING TO HUD HANDBOOK.

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

JOSEPH A. FESSLER AND ANN FESSLER, his wife, respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit filed on 20 August 2009.

OPINIONS BELOW

The court of Middle District of Pennsylvania entered its memorandum decision 22 August 2008. A copy of the order is attached as Appendix A.

The Court of Appeals entered its order dated 20 August 2009. A copy of this order is Attached as Appendix B.

JURISDICTIONAL STATEMENT

The petition for rehearing was denied on 20 August 2009. The court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT V: NOR SHALL ANY PERSON * * * BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW * * * .

STATEMENT OF THE CASE

Denied the right to appeal relocation payments for properties 312-314, Rear 312 East Market Street, 289, 291, 291 ½ East Market Street, 16 South Grant Street, and Rear 16 South Grant Street. All properties are located in Wilkes-Barre, Pennsylvania. A written appeal was filed with Wilkes-Barre Redevelopment Authority and was turned down because I had another rental building; this was also in the project area. An appeal was filed with Paul Cain, Area Director, Department of Housing and Urban Development, Philadelphia, Pennsylvania. In my opinion, he "RUBBER STAMPED" Wilkes-Barre Redevelopment documents regarding my eligibility for relocation payments. According to HUD Relocation Manual 1371, Rev. Chapter 6 Sec. 3, pages 29-30 – "The sole remaining establishment shall not be considered another business." To be considered as another business, Pennsylvania Law states another establishment has to be outside the project area. All of my properties were inside the project area. I was told I could appeal their finding in Court. I filed an appeal in Luzerne County Court, Wilkes-Barre, Pennsylvania. I

never heard from them regarding the matter, so I filed my appeal again with Federal Court Middle District, Scranton, Pennsylvania; United States Court of Appeals, Third Circuit, Philadelphia, Pennsylvania; Supreme Court of the United States, Washington, D.C., and was turned down again. They said I could appeal in Court. What Court honors these APPEALS? These projects are 90% funded by the Federal Government. HUD Manual covers Federal Laws. I feel the Court is biased for not hearing my appeal regarding this matter. In my opinion, Wilkes-Barre Redevelopment Authority and all my lawyers failed to give me the correct information on relocation. Why would I take around $1,400.00, when I am entitled to $100,000.00 for relocating, which I did. If I was fully informed, it is reasonable to assume that I would have taken the $100,000.00 for relocating my business; this information is according to HUD Relocation Handbook 1371.1 Chapter 6, Sec. 2, pages 14-15.

Redevelopment Authority is using the same papers already appealed by me. "GENERAL RELEASE" paper that was in the trash can when I left Lewis Attordo's office. He was the relocation specialist who was working on my cases. This General Release covers Federal and State Eminent Domain laws.

A meeting on 23 August 1974 with Redevelopment Authority lawyer Lawrence Sindaco, my lawyer James Palmero, and Lewis Attordo, relocation specialist, for a review of my relocation. Lewis Attordo

products (GENERAL RELEASE) paper signed by me. All parties informed me that this was in Lewis Attordo's trash can when I left his office 1 March 1974 and is now in my file. I feel Lawrence Sindaco should have had Redevelopment Authority review my claim and correct their mistake and inform me what I was eligible for. The next day, Lawrence Sindaco and Lewis Attordo were no longer with the Redevelopment Authority because of the meeting.

Seeking review of my real estate appraisals. Redevelopment appraisals were low for all my properties taken. I feel this is why they have relocation payments to cover low appraisals of the properties. I feel the money I was eligible to receive was used for other projects in Wilkes-Barre, Pennsylvania. The only people that got full information from Wilkes-Barre Redevelopment and HUD are influential people and friends of Redevelopment Authority.

No information was brought up to the Board of View, Luzerne County Court, in regards to relocation payment. A false statement was made to the Deputy Auditor General Office, Harrisburg, Pennsylvania, regarding this matter.

On 1 March 1974, I drove 23 miles to Hazleton to see my attorney, James Palermo, to notify him that (GENERAL RELEASE) signed by me was gently placed in the trash can. I wanted Attorney Palermo to call Lewis Attordo to make sure it didn't end up in my file. He assured me it wouldn't. Then at a meeting on 23 August 1974, Lewis Attordo produced the General

Release which was now in my file. Attorney Palermo never took any action to rectify it. He also refused to appeal Case #5555 to a higher court, also Relocation. Attorney James Palermo should have been present at the signing of all legal papers and to inform me of my rights. He also legally harassed me, in my opinion, negligently, carelessly, and in violation of code of professional responsibility for a lawyer.

Paul Cain, Ex Area Director; William Thompson, Relocation; Robert Kaplan, Relocation; Wilkes-Barre City; Leon Case, Ex Executive Director; Richard Gelhard, Ex Deputy Executive Director; Maney Whitman, Relocation, failed to oversee all operations of Wilkes-Barre Redevelopment Authority, real estate, and relocation under Federal and State Eminent Domain laws. Failed to comply with Title VI of Civil Rights Act of 1964 and Title VIII of Civil Rights Act of 1968, in Relocation Handbook 1371.1 Rev. Appendix 2 42.105, Relocation in 1371, 1 Rev. Chapter 6, Section 2, pages 6-14-15, Chapter 2, Section, pages 2-18-19.

Redevelopment Authority Relocation specialist should have informed me to determine my relocation needs, preferences and explain relocation payments and any other assistance for which I may be eligible. Assist any person displaced from his business to obtain and become established in a suitable replacement location and comply with zoning laws. Wilkes-Barre Redevelopment took 31 tenants from me and informed me I could relocate anywhere in Wilkes-Barre. I purchased replacement properties in 1974: 209, 211, 213, 215, and 217 East Northampton Street.

Now Wilkes-Barre Zoning Office says I do not comply with zoning laws regarding the roomers at 215 and 217 East Northampton Street. Since Wilkes-Barre City brought zoning laws against me, they have not complied with Federal and State Eminent Domain laws. I should have been relocated and paid up to $100,000.00 to comply with suitable replacement and zoning laws.

Lewis Attordo, Relocation Specialist and James Palmero, Esq., failed to inform me of my full rights and benefits under Federal and State Eminent Domain laws regarding Relocation and failed to inform me about Title VI of Civil Rights Act of 1964 and Title VIII of Civil Rights Act of 1968, in Relocation Handbook 1371.1 Rev. Appendix 2 42.105. Never told me about Relocation in 1371.1 Rev. Chapter 6, Section 2, pages 6-14-15, Chapter 2, Section pages 2-18-19. James. Palermo, Esq., failed to have Wilkes-Barre Redevelopment comply with these orders and should have taken legal action.

I drove to Philadelphia to see Robert Kaplan, Relocation Department of Housing and Urban Development to inform him I wanted to be present when area director Paul Cain makes his decision about my Relocation Appeal. He refused to honor my request.

Appeal all legal fees for Cases #5555 and 5552.

Seeking medical expenses for mental anguish caused by methods used in acquiring my properties.

Relocation appeal was filed in Luzerne County Court on 19 February 1976. Never heard from them (the Court).

This is to inform the Court the replacement buildings I bought: 209, 211, 213, 215, and 217 East Northampton Street; and 26, 28, and 30 Blackman Street of Wilkes-Barre, Pennsylvania. Some were unoccupied at the time. They needed major work done to them such as new electricity, furnaces, plumbing, roofing, new walls and ceilings, storm windows and doors and many other things to get them livable. I feel I should be entitled to Relocation monies of $100,000.00.

Why did my request for relocation appeal take well over 30 days to answer – if I would have had this information, I could have brought it to the trial instead of all this running around now. They had to reply in 30 days; which they didn't.

People who worked for the Redevelopment Authority and lawyers were in the positions of trust.

Why didn't the Board of View take up special damages for relocation, lawyers' fees, loss of rents and monies to fix other places to keep me in business? I want to call lawyers from the Board of View into Court to find out why they never went over these matters.

Regarding this petition, the only dealings Ann Fessler had with Redevelopment Authority was the Real Estate part, but feels she should have been

included in the Relocation part. Also dealings with our lawyers was the contract; also real estate part only feels she should have been included in Relocation part.

Determine if relocation specialist only to tell certain people only certain benefits so they have money left over for other projects.

REASONS FOR GRANTING THE PETITION

Regarding property at 214 East Market Street, Wilkes-Barre, Pennsylvania, Wilkes-Barre Redevelopment Authority and my lawyers failed to give me the correct information regarding real estate and relocation, the same as they did with the other properties. The real estate appraisal was again low, forcing me to take this into Court again.

The Board of View awarded me the $4,100.00 for M&E Real Estate. Wilkes-Barre Redevelopment lawyer, Hugh Mundy, made an incorrect statement before the Court that the Board of View did not award me the money. Instead, this $4,100.00 was given to my tenant, Keystate Bakery, Zatcoff, Inc. There is (NO) such name. Keystate Bakery was not the owner, only a tenant. In my opinion, Wilkes-Barre Redevelopment Authority was using this to take over my real estate by illegal means and this M&E Real Estate should be more than $4,100.00. Efforts to obtain documents from Wilkes-Barre Redevelopment Authority HUD regarding M&E Real Estate have been fruitless.

Seeking recovery of loss of rent monies caused by Wilkes-Barre Redevelopment Authority, Community Development moving tenants out arbitrarily, telling tenants not to pay me rent, thereby forcing me out of business. After forcing my tenants out, they kept one of my tenants, Keystate Bakery, there for well over two (2) years. Documents stating Redevelopment Authority would reimburse the landlord for the rent he would have received had the tenant not been relocated and to pay until last tenant was moved out. Last tenant, Keystate Bakery, was moved out well over two years. I feel I am eligible to collect rent money for well over two years, over $25,000.00 because I never collected just compensation for that length of time.

Seeking recovery of $3,100.00 for personal items, material, tools, and miscellaneous left in the basement.

Paul Cain, Area Director, Department of Housing and Urban Development, failed to take legal action against Leon Case, Thomas Morrisary, Richard Gelhard, City of Wilkes-Barre, in using the name Zatcoff, Inc. t/a Keystate Bakery, when there is no such name. This was on the Declaration of Take and M&E Real Estate of $4,100.00 making this two separate appraisals for property at 214 East Market Street. Wilkes-Barre Redevelopment, HUD, was notified by me, they said Wilkes-Barre City would take necessary action to correct it. They never did, causing me to go to Court and be legally harassed by Redevelopment, Keystate Bakery and lawyers.

David Miller, Esq., failed to take legal action against Wilkes-Barre Redevelopment and Community Development because there is no such name as Zatcoff, Inc. t/a Keystate Bakery; this was on the Declaration of Take and M&E of $4,100.00. Legal action should have been taken against those parties.

Redevelopment Authority gave all businesses new buildings or relocated them without loss of their businesses. They did not move until they were set up in a new business location.

Flanagan, Doran, Biscontini and Shaffer, Attorneys at Law, submitted to Court on Declaration Take Zatcoff, Inc. t/a Keystate Bakery when there was no such name. This was mailed to me by Certified Mail.

David Miller, Esq., in my opinion, was negligent, careless, and in violation of Code of Professional Responsibility for Lawyers.

Hugh Mundy, Esq., Wilkes-Barre Redevelopment lawyer, misinformed the Court about the M&E of $4,100.00, making me go to Court when he knew there was no such name as Keystate Bakery, Zatcoff, Inc., causing me undue hardship, legal harassment, inconvenience, discomfort and embarrassment by the Court and lawyers.

Thomas Morrisary, Real Estate Specialist for Wilkes-Barre Redevelopment Authority, called me to meet twice with him to sign M&E for $4,100.00, saying it belonged to Keystate Bakery, Zatcoff, Inc. Through Federal Court, I found out there was no such

name as Keystate Bakery, Zatcoff, Inc. The reason this was done was because Keystate Bakery had other stores under the name of Keystate Bakery which would not entitle them to relocation allowances of $100,000.00. I remodeled the store and Redevelopment Authority remodeled for Keystate Bakery, doing the same work. The cost to me and Wilkes-Barre Redevelopment was much higher than the $4,100.00 indicated. He should have corrected this before taking me to Court.

Any criticism or blame for action taken by me should blame HUD, Wilkes-Barre City, for not overseeing all operation of Wilkes-Barre Redevelopment, and Wilkes-Barre Redevelopment, for not carrying out HUD's and State, Real Estate and Relocation policies.

Executive director, personnel, lawyers and law firm for Redevelopment and Community Development Authorities were negligent, should have checked to make sure all programs were told to me before Condemnation, Declaration papers were issued before taking me to Court and being harassed by the legal system and lawyers and causing me undue hardships, cruel and unusual punishment. My lawyers for all cases failed to check this out and correct any injustice done to the Fesslers.

Any monetary damages should be paid for by HUD, Wilkes-Barre City, Redevelopment and Community Development Authorities personnel and lawyers of the above agencies.

In all cases, Ann Fessler was part-owner of all real estate and her name should be included on all Relocation papers and she should have been informed of what Relocation benefits she was entitled to. Also, all my lawyers and Relocation Specialist, Board of View, Courts, should have made sure we knew what we were entitled to regarding Relocation benefits before or during the Court hearing.

Relocation gave Joseph Fessler the name of Joseph Fessler Rentals and also Joseph Fessler t/a as Joseph Fessler Rentals when there is no such name. This was on the Relocation check given to Joseph Fessler; lawyer should have been there at the signing of papers and also they were to inform me this was wrong and illegal. Because it shows it is a business also was a way without putting my wife named on the relocation papers. This is a way of cheating the Fesslers out of their benefits. This was a way of keeping the money for other projects. We were the only ones that didn't get relocation benefits in the City. I think they are greedy people dragging me through the court system. My lawyer was at fault too.

Kirk Sauer and his team of lawyers wanted to sanction me for filing so many lawsuits for over $5,000.00 for their work. This is to remind them that they started all this with help of Housing and Urban Development. They should be sanctioned for causing the Fesslers all this trouble of taking me to court again and answering these charges according to HUD handbook or manual. You can't do it to the Fesslers.

The reason why these cases have been in the court so long is four cases in the U.S. District Court and was told by Judge Conboy that for my third case, I was in the wrong court. Said it should be in state court which I did where it was tied up for 18 years and didn't get any satisfaction out of them and was turned down by them. According to HUD handbook, it said I could file as many as I want to till it meets my satisfaction. My gut feeling is that HUD could sanction Kirk Sauer and take all the money off of them if it was proven they violated my relocation benefits which I have proven with all the documents I sent in from HUD's handbook. I believe me and my wife have proven it.

Judge Conboy handled three off my lawsuits in the U.S. District Court, Scranton, Pennsylvania, cv 80-0141, 87-08-49, 89-1647 and the fourth by Judge Vanaskie, 07-1939. In my opinion, he should excuse himself from my second and third cases. The first one was because of lack of subject matter; also no jurisdiction. In federal court, according to HUD handbook, federal officials are involved so I had jurisdiction in federal court, and my case should have been heard in court. The second case in 1987 was dismissed because of lack of subject matter that I failed to state a claim which I did. The third case was res judicata and should be in the state court system where I took it. Federal officials are involved so they cannot be sued in state court. Judge Conboy must have knowledge of this and sending me on a wild goose chase for 18 years in state court. Also Judge

Conboy taking my second and third cases is a conflict of interest. I wonder who assigned judges to their cases in U.S. District Court, Scranton, Pennsylvania. All the documents I am sending to the Supreme Court were given to Judge Conboy. Judge Vanaskie, who handled the fourth case, had all the documents and is a carbon copy of Judge Conboy finding they never read the HUD letter from Paul Cain that I could take my case to the courts and also all the other documents that prove my case overwhelmingly to the courts.

They should read 42.290 Judicial Review. It says nothing in this subpart shall in any way preclude or limit a claimant from seeking judicial review or receiving fair and impartial consideration of his claim on its merits upon exhaustion of such administrative remedies as are available to him under subpart.

All this information is from HUD handbook for relocation and real estate.

The courts and lawyers have been turning me down because they think the letter I got from Paul Cain, "Ex" Area Director of HUD, is a bogus letter.

I don't think there is any case law in the books like my case. It looks like Wilkes-Barre Redevelopment and HUD are bringing back the old west again. No wonder the Indians were mad. I find we are in the same situation regarding this case.

Me and my wife Ann Fessler have a gut feeling why all of our court cases are being turned down so

many times by the U.S. District Court, also the Court of Appeals, and my attorney James Palermo refused to take my case to a higher court and also refused to appeal my relocation benefits in Luzerne County Court and appeals court. Also U.S. District Court, Middle District, Scranton, Pennsylvania, and U.S. Court of Appeals refused to honor Paul Cain's letter dated January 15 1976 giving me permission for judicial review through the courts. Also Wilkes-Barre Redevelopment and U.S. Attorney, Scranton, Pennsylvania, refuse to honor his letter. All my appeals through the courts were according to HUD handbook for relocation and real property acquisition. The reason is Housing and Urban Development could suspend/terminate all HUD financial assistance for a project and recover all funds from Wilkes-Barre Redevelopment Authority if they did not honor the Fessler appeal and if they violate their relocation rights which I have proven in my court papers to the courts. Also HUD failed to oversee all operations of Wilkes-Barre Redevelopment Authority because they are involved why I am being rejected; also my 1980 claim should have been heard so I can have my date in court the court in that case said I didn't have jurisdiction which proves I did.

CONCLUSION

Requesting that Honorable Justices of the Supreme Court grant us our day in court which we have been fighting for the last 35 years with the letter given to us by Housing and Urban Development which we feel we are entitled to. We pray that the Court will help us in this matter.

Respectfully submitted,

JOSEPH A. FESSLER
ANN FESSLER
20 Solomon Street
Ashley, Pennsylvania 18706

App. 1

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3645

JOSEPH FESSLER AND ANN FESSLER,

Appellants

v.

KIRK SAUER, COMMUNITY DEVELOPMENT OF WILKES-BARRE; RICHARD GELHARD, EX-DEPUTY EXECUTIVE DIRECTOR OF THE WILKES-BARRE REDEVELOPMENT AUTHORITY; LOUIS ATTORDO, WILKES-BARRE REDEVELOPMENT AUTHORITY; JOHN G. BRAVACOS, AREA DIRECTOR OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; PAUL CAIN, EX-AREA DIRECTOR OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ALPHONSO JACKSON, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; MARTIN CARLSON, HOUSING URBAN DEVELOPMENT

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 07-cv-1939)
District Judge: Honorable Thomas I. Vanaskie

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
January 29, 2009

Before: RENDELL, HARDIMAN and ROTH,
Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on January 29, 2009. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the order of the District Court entered August 22, 2008, be and the same is hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: March 16, 2009

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH FESSLER, et al.,	:	
Plaintiffs	:	
v.	:	**3:07-CV-1939 (JUDGE VANASKIE)**
KIRK SAUER COMMUNITY DEVELOPMENT, et al.,	:	
Defendants	:	

MEMORANDUM

Pending before this Court are Motions for Default Judgment as to Defendant Alphonso Jackson filed by Plaintiffs Joseph and Ann Fessler. (Dkt. Entries 13 and 15.) Also pending are Motions to Dismiss Plaintiffs' Amended Complaint pursuant to FED. R. CIV. P. 12(b)(1), 12(b)(5), and 12(b)(6) filed by Defendants John Bravacos, Paul Cain, Alphonso Jackson, (Dkt. Entry 17), and Kirk Sauer, (Dkt. Entry 21). For the reasons that follow, the Motions for Default Judgment will be denied and the Motions to Dismiss will be granted.

I. BACKGROUND

On October 24, 2007, Plaintiffs Joseph and Ann Fessler, proceeding *pro se*, commenced this action. (Dkt. Entry 1.) Plaintiffs filed an Amended Complaint

on November 2, 2007. (Dkt. Entry 3.)[1] Plaintiffs entitled their action "Appeal and review of all phasis (sic) of relocation payment under federal and state law using false documents also payment of all legal fees seekin (sic) damage by the Court in excess of 75,000.00 dollars." Essentially, Plaintiffs express dissatisfaction with the amount of compensation they received under state and federal eminent domain laws with respect to certain properties taken in condemnation proceedings in 1973.

Plaintiffs have previously filed three federal suits, *see Fessler v. Wilkes-Barre Redevelopment Authority, et al.*, No. CV-80-0141, slip op. (M.D. Pa. Nov. 20, 1980) (Conaboy, J.), *aff'd mem.*, 681 F.2d 805 (1982), *cert. denied* 459 U.S. 863 (3d Cir.); *Fessler v. O'Karma, et al.*, No. CV-87-0849, slip op. (M.D. Pa. Jan. 11, 1989) (Conaboy, C.J.); and *Fessler v. Finlayson, et al.*, No. CV-89-1647, slip op. (M.D. Pa. Dec. 22, 1989) (Conaboy, C.J.), and an unknown number of similar suits in state court. As Judge Conaboy remarked in

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[1] Pursuant to FED. R. CIV. P. 15(a), Plaintiffs may amend their complaint once, as a matter of course, before any responsive pleading is served. Otherwise, a party may amend only by leave of court or by written consent of the adverse party. Because this Court was not asked to give leave to amend and there is no indication of written consent from Defendants in this case, the Court will only consider Plaintiff's first Amended Complaint filed, as a matter of course, before any responsive pleadings on November 2, 2007, (Dkt. Entry 3), in ruling on these Motions. Subsequent "Amended Complaints" filed by Plaintiffs on December 17, 2007, (Dkt. Entry 16), and January 23, 2008, (Dkt. Entry 26) will not be considered.

his dismissal of Plaintiffs' third federal lawsuit in December 1989:

> The allegations contained in Plaintiff's complaint are not new to this Court. In previous cases, we have ***extensively*** addressed Plaintiffs' claims concerning the condemnation of their properties in 1973. (emphasis in original).

Fessler v. Finlayson, et al., No. CV-89-1647, at 2. Judge Conaboy characterized Plaintiffs' *pro se* filing in their third federal suit as a "'carbon copy' of the proceedings previously filed with this Court," the only difference being the addition of a few new Defendants. *Id.* Judge Conaboy explained that these slight differences did not "cure the past problems faced by the Fesslers in their former pleadings," and dismissed the complaint on the same grounds upon which Plaintiffs' previous federal suits were dismissed. *Id.*

Judge Conaboy dismissed the Plaintiffs' original federal action in 1980 for lack of subject matter jurisdiction, stating "[n]ot only in the pleadings on the record of this case, but even in the farthest reaches of the court's imagination, there is simply no basis for the court's jurisdiction over the present controversy." *Fessler v. Wilkes-Barre Redevelopment Authority, et al.,* No. CV-80-0141, at 5. Plaintiffs' second federal action was dismissed on motions for summary judgment on the grounds that Plaintiffs failed to state a claim and that the Court did not have subject matter jurisdiction. *Fessler v. O'Karma, et al.,* No. CV-87-0849, at 7. Judge Conaboy also relied upon res

judicata, holding that both the 1980 federal action and the actions brought in state court had a preclusive effect on the action at hand. *Id.* at 10-11. In granting summary judgment on res judicata grounds, the Court held:

> In the instant case, any and all issues regarding Plaintiffs' dissatisfaction with the results of the eminent domain proceedings should have been brought in state court. The fact that certain defendants were not parties to that suit is of no consequence in this court. As such, this Court is of the opinion that the doctrine of res judicata is applicable in this matter.

Id. at 12.

The currently pending action represents Plaintiffs' fourth attempt to litigate their dissatisfaction over eminent domain proceedings that took place thirty-five years ago. Pending motions are fully briefed, and this matter is ripe for disposition.

II. DISCUSSION

A. The Principles of Res Judicata

The affirmative defense of res judicata, *see* FED. R. CIV. P. 8(c), requires a showing by the party asserting the defense that there has been "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same causes of action." *United States v. Athlone Industries, Inc.*, 746 F.2d 977, 983

(3d Cir. 1984). The third requirement, that the subsequent claim be based on the same cause of action, is often the most difficult to prove because "'cause of action' cannot be precisely defined, nor can a simple test be cited for use in determining what constitutes a cause of action for res judicata purposes." *Id.* (quoting *Donegal Steel Foundry Co. v. Accurate Products Co.*, 516 F.2d 583, 588 n.10 (3d Cir. 1975)). Determining the existence of a single cause of action is a fact-specific inquiry, and "res judicata is generally thought to turn on the essential similarity of the underlying events giving rise to the various legal claims." *Davis v. United States Steel Supply,* 688 F.2d 166, 171 (3d Cir. 1982). The Third Circuit noted in *Davis* that "[w]hatever the conceptual difficulties inherent in any definition of a 'cause of action,' often the presence of a single cause of action is clear." *Id.*

The three requirements of a successful res judicata defense are satisfied in the instant case. Plaintiffs have fully litigated the issues pertaining to the 1973 condemnation proceedings of their property. *See, e.g., Fessler v. Wilkes-Barre Redevelopment Authority, et al.,* No. CV-80-0141; *Fessler v. O'Karma, et al.,* No. CV-87-0849; and *Fessler v. Finlayson, et al.,* No. CV-89-1647. This Court dismissed Plaintiffs' second and third actions, *O'Karma* and *Finlayson,* on the grounds that res judicata precluded any future suits concerning Plaintiffs' dissatisfaction with the amount of compensation received for the taking of their property in 1973. The current action clearly concerns the same underlying set of events. Indeed, this is

made abundantly plain by the title of Plaintiffs' Complaint: "Appeal and review of all phasis (sic) of relocation payment under federal sand state laws using false documents. . . ." (Dkt. Entry 1.) Plaintiffs concede that this is their "fourth try" bringing action in federal court. (*Id.*)

"The purpose of the principle of res judicata is to end litigation. The theory is that parties should not have to litigate issues which they have already litigated or had a reasonable opportunity to litigate." *Williamson v. Columbia Gas & Elec. Corp,* 186 F.2d 464, 469 (3d Cir. 1950). The Third Circuit has noted that the purpose of res judicata is "to establish finality after a person has had his day in court." *Hopewell Twp. v. Volpe,* 446 F.2d 167, 170 (3d Cir. 1971). Despite Plaintiffs' supplications for their "day in court," Plaintiffs have already had many opportunities in both federal and state court to litigate these issues.[2] Just as this Court determined in its dismissal of Plaintiffs' actions in January 1989, and December 1989, this Court now determines that the currently pending action meets all three requirements of a

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[2] In fact, Defendants in *Fessler v. Finlayson, et al.,* No. CV-89-1647, moved for sanctions against Plaintiffs for their litigious behavior. Although Judge Conaboy denied Defendants' motion for sanctions, he noted that the Court did not condone Plaintiffs' litigiousness and admonished Plaintiffs "that further litigious behavior on their part may very well warrant the imposition of sanctions." *Fessler v. Finlayson, et al.,* No. CV-89-1647, at 3.

successful res judicata defense, and, accordingly, is barred by res judicata.[3]

B. Motions for Default Judgment

The procedure for procuring a judgment by default is governed by FED. R. CIV. P. 55. A two-step process is required. *See, e.g., Ramada Franchise Systems, Inc. v. Baroda Enterprises, LLC*, 220 F.R.D. 303, 304 (N.D. Ohio 2004). Rule 55(a) provides: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." RULE 55(b)(2) addresses the entering of default judgment by the court. "Most courts have interpreted Rule 55 to require entry of default by the clerk before default judgment can be entered." *United States, ex rel. TTL Associates v. Edge Construction CO.*, No. 06-14453, 2007 WL 295219, at *1 (E.D. Mich. Jan. 26, 2007). In this case, Plaintiffs moved for default judgment without asking the Clerk to enter

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[3] Defendants raise several different arguments in support of their motions to dismiss, including failure to state a claim, lack of subject matter jurisdiction, and insufficiency of process. Dismissal of this action on res judicata grounds obviates the need to discuss, at length, alternative grounds for dismissal of this case. It bears noting, however, that the defenses appear meritorious. In this regard, no viable claim can be discerned from Plaintiffs' pleadings and any action concerning events that occurred more than three decades ago would seem to be untimely.

Defendant Alphonso Johnson's alleged default. On this ground alone, the motion for default judgment may be denied.

Furthermore, a default judgment against a party may be set aside by a showing of *good cause*. *See* FED. R. CIV. P. 55(c) Whether or not good cause exists for setting aside a default judgment is within the sound discretion of the Court. *See, e.g., Trachtman v. T.M.S. Realty and Financial Services,* 393 F. Supp. 1342, 1346 (E.D. Pa. 1975). "Generally, a Rule 55(c) motion will not be granted unless the Court finds (1) that the nondefaulting party will not be substantially prejudiced by the reopening, (2) that the defaulting party has a meritorious defense and, (3) that the default was not the result of inexcusable or gross negligence or a willful act." *Id.* The party seeking to set aside a default must, as a prerequisite, show that he has a meritorious defense to the action. *Id. (*citing *Wolkan v. Alladin Intl, Inc.,* 485 F.2d 1232 (3d Cir. 1973)).

Because Plaintiffs' Complaint will be dismissed on the grounds of res judicata, an affirmative defense, Defendants have already shown that they have a meritorious defense to the action, and any default judgment handed down would subsequently be set aside under FED. R. CIV. P. 55(c). Accordingly, Plaintiffs' Motions for Default against Defendant Alphonso Johnson will be denied.

III. CONCLUSION

For the reasons set forth in the foregoing Memorandum, Plaintiffs' Motions for Default will be denied and Defendants' Motions to Dismiss will be granted. An appropriate order follows.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

JOSEPH FESSLER, et al.,	:	
Plaintiffs	:	
v.	:	**3:07-CV-1939**
KIRK SAUER COMMUNITY DEVELOPMENT, et al.,	:	**(JUDGE VANASKIE)**
Defendants	:	

ORDER

NOW, THIS 22nd DAY OF AUGUST, 2008, for the reasons set forth in the foregoing memorandum, **IT IS HEREBY ORDERED THAT:**

1. Plaintiffs Motions for Default (Dkt. Entries 13 and 15) are **DENIED**.

2. The Federal Defendant's Motion to Dismiss (Dkt. Entry 17) is **GRANTED**.

3. Defendants Kirk Sauer and Community Development of City of Wilkes-Barres' Motion to Dismiss (Dkt. Entry 21) is **GRANTED**.

4. The Clerk of Court is directed to mark this matter **CLOSED**.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3645

JOSEPH A. FESSLER;
ANN FESSLER,

Appellants

v.

KIRK SAUER, COMMUNITY DEVELOPMENT CITY OF WILKES BARRE; RICHARD GELHARD, Ex Deputy Executive Director Wilkes Barre; LEWIS ATTORDO; JOHN G. BRAVACOS, Area Director Department of Housing and Urban Development; PAUL CAIN, Ex Area Director of Housing and Director of Housing and Urban Development; ALPHONSIN JACKSON, Secretary of Housing and Urban Development; MARTIN CARLSON; HOUSING URBAN DEVELOPMENT; ACTING US ATTORNEY

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 07-cv-1939)
District Judge: Honorable Thomas I. Vanaskie

Present: RENDELL, HARDIMAN and ROTH,
Circuit Judges.

SUR PETITION FOR PANEL REHEARING

The petition for panel rehearing filed by Appellant having been submitted to all judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for rehearing is hereby DENIED.

BY THE COURT

/s/ *Marjorie O. Rendell*
Circuit Judge

Dated: August 20, 2009
awi/par/cc: J.A.F.
A.F.
D.H.B., Esq.

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84 Stat. 1906

EXPENSES INCIDENTAL TO
TRANSFER OF TITLE TO UNITED STATES

SEC. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for –

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

LITIGATION EXPENSES

SEC. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such

real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if –

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

REQUIREMENTS FOR UNIFORM LAND ACQUISITION POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY TO STATE; PAYMENT OF LITIGATION EXPENSES IN CERTAIN CASES

SEC. 305. Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such State agency that –

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

* * *

24 C.F.R. § 42.100 Purpose.

The purpose of this Subpart is to set forth requirements with respect to the development and implementation of a relocation assistance advisory program for the provision of specified services and to prescribe the obligation of the State agency not to displace or cause the displacement of any person from his dwelling without adequate notice and unless adequate replacement housing is available.

24 C.F.R. § 42.105 Relocation assistance advisory program.

State agencies shall develop and implement a relocation assistance advisory program which satisfies the requirements of § 42.115 and of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968. Such program shall be administered so as to provide advisory services which offer maximum assistance to minimize the hardship of displacement and to assure that (a) all persons displaced from their dwellings are relocated into housing meeting the criteria described in § 42.120, and (b) all persons displaced from their places of business or farm operations are assisted in reestablishing with a minimum of delay and loss of earnings.

24 C.F.R. § 42.11 EXPEDITING PAYMENTS TO OWNERS AND DISPLACED PERSONS.

(a) *General.* The State agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support his claim. Payment for a satisfactory claim shall be made within 30 days following receipt of sufficient documentation to support the claim.

(b) *Advance relocation payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the State agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

24 C.F.R. § 42.13 NOTICE OF DENIAL OF CLAIM

If the State agency denies the eligibility of a claimant for a payment under § 42.119 or § 42.123, or any relocation payment under this part, or disapproves the full amount claimed or refuses to consider the claim on its merits because of untimely filing or any other ground, the State agency shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures and time limitations for appealing that determination under Subpart J (APPEALS).

24 C.F.R. § 42.15 HUD MONITORING AND CORRECTIVE ACTION BY STATE AGENCY.

(a) *General.* HUD will monitor State agency compliance with the regulations in this part. The State agency shall take whatever corrective action is determined by HUD to be necessary to comply with these regulations. HUD may also apply sanctions in accordance with applicable program regulations. *Examples of program sanctions are the suspension or termination of funding for acquisition or displacement-causing activities, the suspension or termination of all HUD financial assistance for a project, and/or the recovery of funds expended for activities not carried out in accordance with these regulations.*

(b) *No payment or underpayment.* Whenever HUD determines that the State agency has failed to provide the full amount of a payment required under these regulations, the State agency shall promptly make the payment as specified by HUD.

(c) *Remedies for substandard replacement housing.* Moreover a displaced person has relocated to substandard housing because required payments, housing referrals, property inspection, or other services were not offered in accordance with the regulations in this part, the State agency shall promptly take whatever steps are appropriate and shall bear whatever reasonable costs are necessary to –

* * *

Title 24 – Housing and Urban Development

SUBTITLE A – OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 42 – RELOCATION PAYMENTS AND ASSISTANCE AND REAL PROPERTY ACQUISITION UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Subpart F – Grievance Procedures Relating to Claims and Payments

Sec.

42.220 Purpose.

42.225 Right of review.

42.230 Notification to claimant.

42.235 Request for State agency review.

42.240 State agency review.

42.245 Request for HUD review.

42.250 HUD review.

42.255 Review procedure in connection with refusals to waive time limitation on filing of claims.

42.260 Extension of time limits.

42.265 Recommendations by third party.

42.270 Review of files by claimant.

42.275 Effect of determination on other persons.

42.280 Construction of rules and regulations.

42.285 Right to counsel.

42.290 Judicial review.

AUTHORITY: 42 U.S.C. 4601; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart F – Grievance Procedure Relating to Claims and Payments

§ 42.220 Purpose.

The purpose of this subpart is to set forth the guidelines for processing appeals from State agency determinations as to eligibility for, or the amount of a payment made under the regulations in Subpart B and §§ 42.140 and 42.145 of Subpart D. State agencies shall establish procedures to implement the regulations in this Subpart. The State agency's procedures may include provisions not included in these procedures provided they are not inconsistent with the procedures contained herein.

§ 42.225 Right of review.

Any claimant, meaning a person aggrieved by a determination as to eligibility for, or the amount of, a payment under the regulations in this part, may have his claim reviewed and reconsidered by the head of the State agency or his authorized designee (other than the person who made the determination in question) in accordance with the procedures set forth

in this subpart, as supplemented by such procedures as the State agency shall have established for such review and reconsideration. Where such a person is not satisfied with the State agency's determination after such review and reconsideration, he is entitled to review of his claim by HUD. Any person or class of persons may similarly seek review and revision of any schedule with respect to payments under the regulations in this part. All the provisions of this subpart shall be fully applicable to such claims for review and revision of any schedule with respect to payments under the regulations in this part.

§ 42.230 Notification to claimant.

If the State agency denies the eligibility of a claimant for a payment or disapproves the full amount claimed or refuses to consider the claim on its merits because of untimely filing or any other ground, the State agency's notification to the claimant of its determination shall inform the claimant of its reasons therefore and shall also inform the claimant of the applicable procedures for obtaining State agency and HUD review of this determination.

§ 42.235 Request for State agency review.

(a) *General.* Any person who has a right to seek review pursuant to § 42.225 may, within the time limit specified in paragraph (d)(1) of this section, request the State agency to provide him with a full written explanation of its determination and the

basis therefore if he feels that the explanation accompanying the payment of his claim or notice of the agency's determination was incorrect or inadequate. The State agency shall provide such an explanation to the claimant within 15 days of its receipt of claimant's request.

(b) *Informal presentation.* Upon request of the claimant, within the time limit specified in paragraph (d)(1) of this section, the State agency shall, within 15 days of the request, afford him an opportunity to make an oral presentation prior to filing a written request for review pursuant to paragraph (c) of this section. The claimant may be represented by an attorney or other person of his choosing. This oral presentation shall enable the claimant to discuss his claim with the head of the State agency or a designee (other than the person who made the initial determination) having the authority to revise the initial determination on the claim. The State agency shall make a summary of the matters discussed in the oral presentation and it should be included as part of its file.

(c) *The written request for review.* The claimant may include in his request for review any statement of fact within his knowledge or belief, or other material which he feels has a bearing on his appeal. If the claimant requests more time to gather and prepare additional material for consideration or review and demonstrates a reasonable basis therefor, he may be granted 30 days from the date of his request for review. If the claimant feels he is unable

to prepare the written claim, the State agency shall offer to provide assistance to the claimant and further notify the claimant of other available sources of assistance. The making of an oral presentation pursuant to paragraph (b) of this section shall not be deemed a condition precedent to the filing of a written request for review.

(d) *Time limits for filing written request for review.* (1) A claimant desiring review and reconsideration of the State agency's determination shall file a written request for review with the State agency either (i) within 6 months of the agency's notification to the claimant of its determination or (ii) prior to final closeout of the project which caused the displacement, whichever is earlier, but in no event less than 30 days following the agency's notification to the claimant of its determination.

(2) The time period specified in paragraph (d)(1) of this section shall be extended if necessary so that a claimant who previously made requests pursuant to paragraph (a) or (b) of this section shall have no less than 30 days from his receipt of the written explanation or from making the informal presentation, whichever is later, within which to file his written request for review and reconsideration.

§ 42.240 State agency review.

(a) *General.* The State agency shall consider the request for review and shall make a determination as to whether a modification is necessary.

This review should be conducted by the head of the State agency or his authorized designee (other than the person who made the determination). A designee must have the authority to revise the initial determination of the claim and any determination reached pursuant to an oral presentation. The State agency shall consider every complaint regardless of form.

(b) *Scope of review.* The State agency shall review and reconsider its initial determination of the claimant's case in light of:

(1) All material upon which the State agency based its original determination including all applicable rules and regulations;

(2) The reasons given by the claimant for requesting review and reconsideration of his claim;

(3) Whatever additional written material has been submitted by the claimant; and

(4) Any further information which the State agency may, in its discretion, obtain by request, investigation, or research, to insure fair and full review of the claim.

(c) *Determination on review by State agency.* The final determination on review by the State agency shall include, but is not limited to:

(1) The agency's decision on reconsideration of the claim;

(2) The factual and legal basis upon which its decision is based, including any pertinent explanation or rationale;

(3) A statement of claimant's right to seek within 30 days further review of his claim by HUD and an explanation of the steps the claimant must take to obtain this review, including the address of the HUD Area Office which has responsibility for the locality wherein the displacement occurred.

(d) *Time limits.* (1) the State agency shall issue its determination of review within 30 days from receipt of the last material submitted for consideration by the claimant in accordance with § 42.235. The State agency shall forward a copy of the determination to the HUD Area Office at the time the determination is sent to the claimant. (Unless the context indicates otherwise, "Area Office" and "Director" shall be used in this subpart to refer to the Regional Office and the Regional Administrator where there is no area office.)

(2) In the case of complaints dismissed for untimeliness or for any other reason not based on the merits of the claim, the State agency shall issue a statement as to why the complaint was dismissed to the claimant and forward a copy to the HUD Area Office within 10 days from receipt of the last material submitted by the claimant.

§ 42.245 Request for HUD review.

(a) *General.* Any person who believes himself aggrieved as the result of the final determination of his claim on review by the State agency may request HUD review of his claim. The request for HUD review shall be submitted to the Director of the HUD Area Office which has responsibility for the particular locality wherein the displacement occurred.

(b) *Submission by claimant.* The claimant may include in his request for review by the Area Director any facts within his knowledge or belief or other material which he feels will have a direct bearing on his claim: *Provided*, That where the claimant submits material to HUD which was not submitted to the State agency for review, HUD will provide the State agency an opportunity to review such new material and to submit any comments it wishes to make.

(c) *Submission of State agency's file.* Upon receipt of a request for review by HUD, the Area Director shall forward a copy of such request by certified mail, return receipt requested, to the State agency which made the initial determination, and shall direct the State agency to submit a copy of the complete file of the claimant's case, including materials upon which the State agency shall forward this material to the Area Director within 10 days of having been directed to do so.

(d) *Time limit.* The claimant shall file a written request for review of his claim with the Area Director

within 30 days from the date of receipt of the determination or review issued by the State agency.

§ 42.250 HUD review.

(a) *General.* The Area Director shall issue his determination on review within 30 days from the date of receipt of the last material submitted by the claimant in accordance with § 42.245 or the date of receipt of the complete file of claimant's case from the State agency, whichever is later.

(b) *Scope of review.* The Area Director shall make his determination of the claimant's case in light of:

(1) All material upon which the State agency based its original determination, including all applicable rules and regulations;

(2) The reasons given by the claimant for requesting review and reconsideration of his claim;

(3) Whatever written material has been submitted by the claimant; and

(4) Any further information which HUD may, in its discretion, obtain by request, investigation, or research to insure a fair and full review of the claim.

(c) *Determination on review by HUD.* The written determination by HUD shall be delivered to the State agency and to the claimant and shall include but need not be limited to:

(1) The Area Director's decision on reconsideration of the claim;

(2) Findings of fact and conclusions of law, including any pertinent explanation or rationale;

(3) If the claimant is determined to have been aggrieved as to eligibility for, or the amount of, a payment under the regulations in Subpart B or under § 42.140 or § 42.145 of Subpart D, a direction to the State agency to take immediate steps to make payment to the aggrieved person in accordance with the HUD determination;

(4) A statement of claimant's right to seek judicial review.

(d) *Final determinations not based on merits.* A State agency's refusal to review a claim (e.g., because of claimant's failure to request such review within the required time period) shall be considered as a "final determination" and upon the claimant's request shall be reviewed by HUD. If the Area Director finds that the State agency's refusal to review the claim was unreasonable, the claim shall be remanded to the State agency for review on its merits within 30 days of the State agency's receipt of the remanded claim. If the State agency's refusal to hear the claim is not found to have been unreasonable, the Area Director shall so notify the claimant and inform him that he may have a right to judicial review.

* * *

§ 42.255 Review procedure in connection with refusals to waive time limitation on filing of claims.

(a) *State agency review.* Whenever a State agency rejects a request by a claimant for a waiver of the time limits provided in § 42.60 for filing payment claims, a claimant may file a written request for review of this decision in accordance with the procedures set forth in §§ 42.235 and 42.240, except that such written request for review must be filed within 30 days of the claimant's receipt of the State agency's determination. If after reviewing the claim the State agency determines that the time limits for filing claims should be waived, the State agency shall promptly request HUD concurrence in accordance with § 42.215 and the claimant shall be so informed.

(b) *HUD review.* If upon review the State agency determines that the time limits for filing claims should not be waived, the claimant should be so informed in accordance with § 42.240(c). If the claimant believes himself aggrieved by this determination, he may then file a written request, in accordance with the procedures of §§ 42.245 and 42.250, to the Director of the Area Office, which has responsibility for the locality wherein the displacement occurred, for a review of the reasonableness of the State agency's determination in refusing to grant the waiver. If the Area Director determines that there was good cause for the failure to file within the time period of § 42.60, he shall then remand the claim to the State agency for consideration on the merits and

the claimant shall be so informed. If the Area Director concurs in the State agency's determination that a waiver should not be granted, both the State agency and the claimant shall be informed that he may have a right to judicial review.

§ 42.260 Extension of time limits.

The time limits specified in §§ 42.235 and 42.245 may be extended for good cause by the State agency or by the Area Director, respectively.

§ 42.265 Recommendations by third party.

Upon agreement between the claimant and the State agency, a mutually acceptable third party or parties may review the claim and make advisory recommendations thereon to the head of the State agency for its final determination. The agreement between the claimant and the State agency may provide for an extension of the time limit for State agency review set out in § 42.240(d). In reviewing the claim and making recommendations to the State agency, the third party or parties should be guided by the provisions of § 42.240(b) and paragraphs (c)(1) and (2) of § 42.240. The requirements of these sections and of paragraph (c)(3) of § 42.240 remain fully applicable to the State agency.

§ 42.270 Review of files by claimant.

Except for confidential material, and except to the extent specifically prohibited by law, a State agency shall permit the claimant to inspect all files and records bearing upon his claim or the prosecution of his grievance. The State agency may, however, impose reasonable conditions on the claimant's right to inspect.

§ 42.275 Effect of determination on other persons.

The principles established in all determinations by a State agency (unless modified by HUD) or by HUD shall be applied to all similar cases regardless of whether or not a person has filed a written request for review.

§ 42.280 Construction of rules and regulations.

This subpart, and all applicable rules and regulations on which State agency and HUD determinations are based, shall be liberally construed so as to fulfill the statutory purpose as declared in section 201 of the Act of "fair and equitable treatment" in order that displaced persons "not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

§ 42.285 Right to counsel.

Any aggrieved party has a right to representation by legal or other counsel at his own expense at any and all stages of the proceedings set forth in this subpart.

§ 42.290 Judicial review.

Nothing in this subpart shall in any way preclude or limit a claimant from seeking judicial review or receiving a fair and impartial consideration of his claim on its merits upon exhaustion of such administrative remedies as are available to him under this subpart.

Effective date. These regulations are effective as of March 26, 1973.

JAMES T. LYNN,
Secretary of Housing
and Urban Development.

JAMES S. PALERMO
ATTORNEY AT LAW
700 NORTHEASTERN BANK BUILDING
HAZLETON, PENNSYLVANIA 18201

(AREA CODE 717)
TELEPHONE 454-5861

October 17, 1973

Mr. Thomas Jordan
Redevelopment Authority of
the City of Wilkes-Barre
Wilkes-Barre, Pennsylvania

Dear Tom:

We very hurriedly looked at the Settlement Sheet for estimated just compensation at the Court House yesterday afternoon at 4:00 P.M., after the Board of View hearing.

The figures that you indicated on your Settlement Sheet are agreeable; however, this morning Joe checked with me and I informed him that he is correct that he should be given credit for the fuel oil in all the tanks in all the properties taken. He just got a new shipment of oil a day or two ago, so the amount of oil in place in all the tanks as of October 16, 1973, is $150.00.

Therefore, it is requested that you make this simple correction in the Settlement Sheet and add the sum of $150.00 to the net due Joseph and Ann Fessler.

Finally, we are having difficulty collecting some of the rents due because of conflicting instructions given to the tenants and some of them are moving without paying their bills. We agree with your prorating the rent and withholding the sum of $292.08, but we may be obliged to make a claim against you later for rent lost to the Fesslers due to the interference of the Redevelopment Authority.

Thank you for your courtesy and cooperation.

Sincerely yours,

/s/ Jim Palermo
James S. Palermo

DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
PHILADELPHIA AREA OFFICE
CURTIS BUILDING 6 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19106

[SEAL]
REGION III
Curtis Building
Sixth and Walnut Streets
Philadelphia,
Pennsylvania 19106

JAN 15
1976

597-2655
597-2645

IN REPLY REFER TO:
3.4CM

Mr. Joseph A. Fessler
R.D. #1 Trailwood
Wilkes-Barre, Pennsylvania 18701

Dear Mr. Fessler:

Subject: Request for Hearing on Eligibility for Relocation Payment

LEWIS ATTORDO RELOCATION SPECIAIST NEVER INFORMED ME ABOUT RELOCATION NEVER CALL ME IN TO GO OVER WHAT ENTITLE TO REGARDING RELOCATION BENEFITS I AM PART OWER ANN FESSLER AND MY NAME SHOULD BE ON ALL THE PAPER WORK ALSO THERE IS NO SUCH NAME OF JOSEPH FESSLER RENTALS OR FESSLER RENTALS THIS MAKE ALL RELOCATION MULL VOID ALSO ARE LAWYER WAS NOT PRESENT AT THE SIGNING OF THESE PAPERS.

/s/ Ann Fessler
ANN FESSLER

We have reached a determination on your appeal for a hearing as a result of denial of a Relocation payment by the Wilkes-Barre Redevelopment Authority.

We regret to inform you that we must agree with the Redevelopment Authority in denying your claim for payment under Section 601 A(b)(3) of the Pennsylvania Eminent Domain Code. One of the requirements for eligibility under this section is that the business being displaced is not part of a commercial enterprise having at least one other establishment engaged in the same or similar business which is not being acquired. Your file, which we received from the Redevelopment Authority, reveals that you own a similar business at 289-291 E. Market Street.

If you are not satisfied with this decision you have the right to seek judicial review through the courts.

Sincerely,

/s/ Paul T. Cain
Paul T. Cain
Area Director

Redevelopment Authority of the City of Wilkes-Barre

500 WILKES-BARRE CENTER, 39 PUBLIC SQUARE,
WILKES-BARRE, PENNSYLVANIA 18702 / (717) 829-1381

Horace Kramer, Chairman
Joseph [Illegible]
Dr. P.J. Wall
Michael P. Trethaway
Roman A. Rubenstein

Leon Case
Executive Director

Donald McFadden
Counsel

September 30, 1975

Mr. Joseph A. Fessler
R.D. #1 Trailwood
Wilkes-Barre, PA

Dear Mr. Fessler:

I have reviewed the information which you presented at your hearing under the Relocation Grievance Procedure on September 2, 1975. It was your contention that the Relocation Department should not have denied you payment under Section 601-A of the Eminent Domain Code which provides for compensation for a business which cannot be relocated without a substantial loss of patronage.

The issue involved our acquisition of an income-producing property owned by you and located at 289-291 East Market Street. It was the contention of the Relocation staff that since you owned an additional income-producing property at 214 East Market Street which was not being acquired by the Redevelopment Authority, you did not meet one of the pre-requisites required by Section 601-A of the Eminent Domain

Code and were not eligible for the benefits provided by that Section.

The facts outlined above were verified by you at your hearing held on September 2. Consequently, it is my final determination that since you did have another income-producing property not being acquired by the Redevelopment Authority, we do not have the legal capacity to award payment under the provisions of 601-A.

I would like to advise you that you do have the right to appeal this decision to the Philadelphia Area Office of the Department of Housing and Urban Development. Any appeal would have to be in writing and must be submitted within 30 days of the receipt of this final determination. The appeal would be addressed to the following:

Mr. Paul T. Cain
Area Director
Department of Housing and Urban Development
Philadelphia Area Office
Curtis Building
Sixth and Walnut Streets
Philadelphia, PA 19106

Attention: Mr. Robert Kaplan

If you decide to take this appeal and need any assistance in doing so, we shall be happy to help you.

Sincerely,

/s/ Richard M. Gelhard
Richard M. Gelhard
Deputy Executive Director

g:h

THIS LETTER SHOULD BE MULL AND VOID BECAUSE MY SIGNATURE WAS NOT RELOCATION PAPERS AND I AM PART OWNER OF THE PROPERTIES LISTED BECAUSE LEWIS ATTORDO NEVER CALL ME IN TO GO OVER THE BENEFITS OF THE RELOCATION ACT ALSO ARE LAWYER WAS NOT PRESENT AT THE TIME

/s/ Ann Fessler
ANN FESSLER

RD#1, Wilkes Barre, Penna.
16 October 1975

Mr. Paul Cain
Area Director
Department of Housing & Urban Development
Philadelphia Area Office
Curtis Building
Sixth And Walnut Streets
Philadelphia, Penna.

Dear Mr Robert Kaplan

Regard this Letter as an "APPEAL" to my relocation allowance and lost of business, loss of Patronage properties 289, 291, 291 ½ East Market Street, Wilkes Barre, Penna. also Rear 16 South Grant Street, 16 South Grant Street, Wilkes Barre, Penna. This was rejected by the Wilkes Barre, Redevelopment, Wilkes Barre, Penna. Letter Dated 30 September 1975.

/s/ Joseph A. Fessler
Joseph A. Fessler

MAKE THIS PAPER MULL AND VOID BECAUSE I AM PART OWNER OF ALL THE PRPERTIES LISTED AND WAS NEVER CALLED IN ABOUT MY RELOCATION BENEFITS WERE NEVER EXPLAINED TO ME.

/s/ Ann Fessler
ANN FESSLER

THIS IS REGARDING PROPERTIERS 312 314 REAR 312 EAST MARKET STREET WILKES BARRE, PA.

BOARD OF VIEW OR THE APPRAISAL WAS DONE ON THIS BUILDINGS LATTER PART OF 1972. THIS PROPERTY WAS NEVER DEEDED TO US UNTIL THE 20 JULY 1973 THIS MAKES THIS PROPERTIES MULL AND VOID AND SHOULD BE RETURN TO THE FESSLERS AND WILKES BARRE REDEVELOPMENT BE CHARGES DAMAGES AND GO BY RELOCATION DAMAGES OF 100.000.00

/s/ Joseph A. Fessler
JOSEPH FESSLER

/s/ Ann Fessler
ANN FESSLER

[SEAL]
C. PAUL BRUBAKER, JR.
DEPUTY AUDITOR GENERAL
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA 17120

August 13, 1975

Mr. Joseph Fessler
R. D. #1
Wilkes-Barre, Pa. 18702

Dear Mr. Fessler:

We have researched the eligibility requirements for a payment in lieu of moving and related expenses (loss of patronage) and have applied them to your particular circumstances. The eligibility requirements for a business concern as stipulated in the HUD Relocation Handbook are as follows:

> "A displaced business concern may be eligible for a payment in lieu of moving and related expenses if the local agency determines that the business meets the three tests described below. Any business that meets these three tests is eligible irrespective of whether it continues or discontinues its operations.
>
> *Test 1.* The business cannot be relocated without a substantial loss of its existing patronage. Loss of existing patronage is presumed unless the type of operation is such that patronage is not dependent upon location in the neighborhood from which displacement takes place. Examples of this type of operation might be the general practice of law, medicine, or dentistry . . .

Test 2. The business is not part of a commercial enterprise having another establishment which is not being acquired for the project, and which is engaged in the same or similar business.

Exception. The sole remaining facility of a business that has been displaced from its principal location shall not be considered as 'another establishment' for purposes of Test 2 if, during the two taxable years prior to displacement of the major component of the business, the remaining facility had:

How could 31 tenant move into a a 12 room unit that is fully occupy. I had another rental building but was inside the project area. How could I relocated without substantial loss of existing patronage. this should say NOT because above statement. they also moved my tenants out in July 1973 which I never collected rent from that time.

1. Average gross receipts of less than $2,000; *or*

2. Average annual net earnings of less than $1,000.

Test 3. During the two taxable years prior to displacement, the business:

(a) Had average annual gross receipts of at least $2,000; *or*

(b) Had average annual net earnings of at least $1,000; *or*

(c) Contributed at least 33 ⅓ percent of the average annual gross income of the owners or operators of the business . . . "

Briefly, a payment in lieu of moving and related expenses is computed based on the average annual net earnings of a business concern but not less than $2,500 nor more than $10,000. Thus, if eligible, you would be entitled to the average net earnings on the properties sold for the two-year period immediately preceding displacement. However, the moving ($892) and searching ($500) expenses already received by you would have to be refunded since the payment for loss of patronage is "in lieu of moving and related expenses".

The rental of real property is considered a business under HUD regulations thus making you eligible for a payment in lieu of moving and related expenses provided the other requirements are met. However, the "YES" answers on your "Determination of Eligibility for Business Relocation Payment" disqualify you based on Test 2. The following appear on the Determination questionnaire provided by you:

"B. DATA FOR ADDITIONAL DAMAGES

1. Is the concern part of a comercial enterprise having another establishment in the same or similar business which is not being acquired

_X_ Yes ____ No

2. Can the concern be relocated without substantial loss of its existing patronage

__X__ Yes ____ No

NOTE: For concern to be eligible answers to 1 and 2 must be No."

A representative of the Redevelopment Authority of the City of Wilkes-Barre indicated that you are not eligible for a payment in lieu of moving and related expenses since you own another commercial enterprise (apartment house) in the area which was not being acquired. He further indicated that since your property was acquired through condemnation proceedings the Board of View also examined the relocation payments made to you and concurred with the Authority's decision. The representative also informed us that the "General Release" signed by you discharges the Authority from any further relocation claims.

This Statement made to the deputy Auditor General was lie Because the board of view never handle that part of the claim.

Since relocation payments constitute federal funds, we contacted the U.S. Department of Housing and Urban Development in Philadelphia. The Philadelphia office referred us to the Scranton Special Recovery office (HUD Area office) located at Spruce and Adams Streets in Scranton. Your claim was discussed with Mr. William Thompson. We informed him that you have other commercial enterprises (rental properties) in the area which were not being

acquired. However, you suffered a loss of income because your tenants in the property acquired moved elsewhere. We also indicated that it appeared Test 2 was designed to apply to chain stores in that there would be no appreciable loss of income since customers would probably patronize the remaining store in the area. From a technical standpoint the answer to question No. 1 of Section B of the "Determination of Eligibility for Business Relocation Payment" is "Yes" since you have another commercial enterprise. However from a practical standpoint there is a loss of income on your part which should entitle you to a payment in lieu of actual moving and related expenses. The purpose of the law is to compensate business for a loss of income, which has obviously occured in your case.

Mr. Thompson stated that by law you are not entitled to a payment in lieu of actual moving and related expenses. However, he did agree with our comments and indicated that he would personally review your case and contact the Redevelopment Authority. Mr. Thompson's telephone number is 717-961-3841.

As previously indicated relocations payments are Federal funds and therefore your HUD area office is responsible for eligibility determinations. You have the right to appeal the decision of your local agency and we suggest that you question the HUD officials further if you feel you have not been treated fairly.

Sincerely,

/s/ C. Paul Brubaker
C. Paul Brubaker, Jr.
Deputy Auditor General

CPB:mg

MAKE THIS PAPER MULL AND VOID BECAUSE I AMM PART OWNER OF ALL THE PROPERTIES TAKEN AND LEWIS ATTORDO NEVER WHEN OVER RELOCATIONS BENEFITS WITH ME AND THE LAWYER WAS NOT PRENST AT THE SIGNING OF THIS PAPER.

ANN FESSLER
/s/ Ann Fessler

GENERAL RELEASE

REDEVELOPMENT AUTHORITY
OF THE CITY OF WILKES-BARRE

Be it known that, Joseph A. Fessler for and in consideration of the sum of $4, 517.30 lawfal money of the United States of America in hand paid by the Redevelopment Authority of the City of Wilkes-Barre, with offices at the First National Bank Building, Wilkes-Barre, Pa. the receipt whereof is hereby acknowledged as having released and forever discharged the Redevelopment Authority of the City of Wilkes-Barre from all, and all manner of action and actions, cause and causer of action, suits, debts, sums of money, accounts, bills, contracts, agreements, promises, damages, judgements, extents, executions, claims and demands whatsoever, against the Redevelopment Authority of the City of Wilkes-Barre.

The above release reflects upon the relocation procedures regarding the above-mentioned parties, individuals, companies, business firms, and/or corporations.

The above claimant, clearly states that receipt of the above sum constitutes full payment for all claims for relocation payments under any and all State and Federal laws.

/s/ Joseph A. Fessler
Signature

/s/ Lewis C. Attordo
Witness

March 1, 1974
Date

THIS PAPER WAS IN THE TRASH CAN WHEN I LEFT LOU ATTORDO OFFICE 1 MARCH 1974. I was called in three times to sign the same papers the last time they inserted this paper with the others but I read had put in the trash can. Attached is the routing slip will show I signed papers three times an was send to Philadelphia for approval Lewis Attodo Signature was not on the General Release paper in trash can

COMMERCIAL RELOCATION FILE

Name of Business Joseph Fessler Rentals

Name of Project Heights A-11

ROUTING SCHEDULE FOR RELOCATION FILE

DATE COMPLETED	PROCEDURE
1/29/74	Claim forms completed
1/29/74	Presented for typing

1/30/74	Completely typed
2/1/74	Submitted to business concern for signature
2/1/74	Signed forms returned by business
2/1/74	Sent to Fiscal Management Department (2nd time 2/7/74)
2/6/74	Returned from Fiscal for Additional Information
2/28/74	Returned from Fiscal Management Department
2/9/74	Turned over to Business for Additional [Illegible]
3/1/74	Check given to business

COMMENTS

This shows was sent to HUD Philadelphia 3 times for approval.

ORDER OF FILE

Form 201 – Memorandum to Fiscal Management Department

Form 202 – Case History

Form 203 – General Release
Copies of all Checks

Form 204 – Claim for Actual Moving Expenses
Claim for Actual Moving Expenses including Storage

Supporting Documentation for Form 205 – This may include Forms 205A, 205B; bids; moving bills; etc.

Form 206 – Claim for Direct Loss of Property

Form 206A or 206B showing method of calculating Direct Loss of Property Payment

Copies of Appraisals

Documentation regarding a sale to dispose of personal property

Forms 206C and 206D if applicable

Form 207 – Claim for Actual Reasonable Searching Expenses

Documentation to support Form 207

Form 208 – Claim for Additional Damages

Form 209 – Schedule D – Claim for Additional Damages

Documentation to support Form 208 and 209, such as copies of tax returns, etc. Loss of patronage (Form 210) may also be used here.

Form 210 – Determination of Eligibility for Relocation Payments

Form 107A or 107B – 90 Day Notice to Vacate

Form 109, 110, 111 – Notices of Intent

Form 104 – Receipt of Informational Statement

THE ABOVE DATA IS SENT TO THE FISCAL MANAGEMENT DEPARTMENT FOR PAYMENT. THE FOLLOWING DATA

SHOULD REMAIN IN THE CASE FILE IN THE RELOCATION DEPARTMENT.

Form 106 – Visitation Reports

Form 101 – Relocation Survey

Form Letters – 102, 103, 105, 108, 112, 113, 114
(wherever applicable)

Additional notes and documentation

Wilkes-Barre Redevelopment Authority

Redevelopment Authority of the City of Wilkes-Barre

500 WILKES-BARRE CENTER, 30 PUBLIC SQUARE,
WILKES-BARRE, PENNSYLVANIA 18702 / (717) 829-1381

Horace E. Kramer, *Chairman*
Joseph F. Long
Dr. P.J. Wall
Michael B. Rushton
Harold P. Trethaway

Leon E. Case
Executive Director

Donald D. McFadden
Counsel

March 10, 1976

Mr. Joseph Fessler
R. D. #1
Wilkes-Barre, PA 18702

Dear Mr. Fessler:

I have received your letter of March 5, 1976 and wish to clear up the two matters raised in that letter.

One February 17, 1976 at a hearing before Judge Bigelow, you agreed to accept payment for 214 East Market Street. As a result of that agreement, the Judge signed an order to that effect. Since you refused to accept payment, we had no choice but to pay that money into court. There has been no violation of your rights, rather you have chosen to ignore the Judge's order.

Your letter also refers to a grievance hearing with regard to the payment of money into court. Please be advised that a grievance hearing refers only to grievances having to do with relocation payments. If you have a grievance with regard to a relocation payment,

a hearing will be held. However, the grievance procedure does not apply to anything having to do with the acquisition of property.

There is one other thing you should know, whenever you hire an attorney and we are informed that that attorney is representing you, ethics demand that we negotiate with that attorney. We cannot bypass the attorney and negotiate with you directly. Please keep this in mind for the future.

Sincerely,

/s/ Richard M. Gelhard
Richard M. Gelhard
Deputy Executive Director

WAS CALLED IN

g:h *JOSEPH FESSLER AND HIS WIFE WAS NEVER CALLED IN AT ANY SIGNING OF RELOCATION PAPER ALSO MY WIFE IS PART OWNER THIS SHOULD MAKE THIS MULL AND VOID ALSO LAWYER WAS NOT PRESENT AT THE TIME.*

/s/ Ann Fessler
ANN FESSLER

I should have been paid this amount for relocation.

c. *Limitations.*

(1) *Maximum Amount. Reimbursable costs for physical changes and conversion of equipment may not exceed $100,000 for each business. (A determination of the number of businesses shall be made as described in paragraph 6-34b.) Costs in excess of $25,000 require prior HUD approval (see subparagraph 6-21f below).*

(2) *Nonallowable Amount.* Reimbursable costs for physical changes and conversions may not include any amounts received by the business concern as compensation for comparable additions, improvements, alterations, or other physical changes to the structure and premises at the former location, as part of the payment made by the local agency for acquisition of such structures and premises.

d. *Notification to Local Agency.* In any case where it appears that the move of a business concern will require physical changes at the replacement location or conversion of relocated equipment, the local agency shall

require that the business concern discuss its plans with the agency *before* initiating any action related to the rental or purchase of the replacement site. When agreement is reached to go forward with a move that will involve physical changes or conversion of relocated equipment, the local agency shall require that the business concern submit the following documentation, as applicable, either before or after the move:

(1) *A detailed description or drawing,* or both, of the installation in the former location.

(2) *A detailed description or drawing,* or both, of the installation as proposed or actually installed at the replacement site.

(3) *A copy of all instructional materials or drawings* to be provided to contractors or workmen.

(4) *A statement describing the basis for the estimated* or actual cost related to the physical changes.

* * *

2-24. ASSISTANCE TO BUSINESS CONCERNS, NONPROFIT ORGANIZATIONS, AND FARMS.

a. *Requirement.* The local agency shall provide relocation advisory assistance to all business concerns, nonprofit organizations, and farm operations to be displaced by a project or program. The agency shall also provide advisory services and assistance to any business concern or nonprofit organization occupying property which is immediately adjacent to (1) the project area, or (2) any real property acquired, when the business is determined to have suffered substantial economic injury as a result of project activities.

b. *Services To Be Provided.* Among the services which the local agency shall provide to business concerns, nonprofit organizations, and farm operations are the following:

(1) *Consultations.* The local agency shall consult with the owner or operator to determine the need for relocation assistance. The consultations shall include discussions of such items as space, traffic patterns, market and other requirements, the total number of employees, and the number of minority-group employees.

(2) *Current Information on Relocation Sites.* The local agency shall provide current and continuing information on the availability, costs, and square footage of comparable commercial, industrial, or farm locations and make referrals to real estate brokers who may be able to assist in obtaining suitable accommodations. In making referrals and providing information, the local agency should provide maximum assistance but avoid involvement in or interference with the business operation or the decisions of the business owner or operator.

Lou Attorde was to tell me about zoning and to check the property I Bought for relocation 209, 211, 213, 215, 217, East Northampton St. 26, 28, 30 Blackman St all of Wilkes Barre, Pa.

(3) *Economic Information.* The local agency shall provide general information relative to property values, growth potentials in various areas, zoning ordinances, and other similar information which may assist in enabling the business to make informed decisions relative to relocation.

(4) *Referrals to SBA.* Where appropriate, business concerns should be referred to the Small Business Administration (SBA) for managerial and technical assistance. Business concerns may also be eligible

for SBA-administered "Displaced Business Loans". In order to facilitate SBA assistance to business concerns, the local agency has an obligation to furnish SBA with a complete listing of all business concerns which may be affected by the HUD-assisted activity. The listing should include the names, addresses, and types of businesses, as well as identify the principal owner or responsible representative.

2-25. INSPECTION OF REPLACEMENT DWELLING.

a. *Requirement.* The local agency shall inspect the replacement dwelling to which each displaced family or individual moves and shall maintain in its files a dwelling inspection report indicating the condition of the unit.

b. *Procedures.*

(1) *Local Agency Responsibility.* The local agency is responsible for inspecting all replacement dwellings unless the unit is located at a distance beyond which the agency may reasonably be expected to carry out inspections. (See subparagraph (3) below.)

(2) *Timing of Inspection.* Replacement dwelling units should be inspected prior to the time that the displaced family or individual moves in, if at all possible.

* * *

determination is made, there shall be no adjustment of the amount for any reason unless an error is detected, the agency is directed by HUD or a court to make an adjustment, or an adjustment is necessary as a result of review of the claim in accordance with established grievance procedures. Determinations on claims shall be made or approved either by the governing body of the agency or by the principal executive officer of the agency or his duly authorized designee.

c. *Claimant Found Ineligible for Payment.* Ineligible claimants shall be given written notice of the reason(s) for disapproval of a claim. The notification shall include a description of the steps that the claimant may take to obtain a review of the claim. (See paragraph 4-31.) If ineligibility for a replacement housing payment is because of a move to substandard housing, the notification shall indicate that the local agency will provide all possible assistance to enable the claimant to occupy housing that is decent, safe, and sanitary but, to be eligible for the payment, the claimant must meet specified time requirements related to the date of the move from the former dwelling or payment for the dwelling by the agency (see Chapter 5, paragraphs 5-23b and 5-43b).

d. *Prior HUD Concurrence.* If a claim for a relocation payment for a business concern or farm operation includes physical changes at the new location which cost more than $25,000, written concurrence must be obtained from HUD before the local agency may make payment in whole or in part. (See Chapter 6, paragraph 6-21f.)

e. *Documentation of Local Agency File.* The local agency shall maintain in its tiles complete and proper documentation supporting the determination made with respect to each claim. Guideforms for use in determining eligibility for and the amount of payments to be made are listed in Figure 4-2 and exhibited in the Appendices to this Handbook.

* * *

RELOCATION HANDBOOK

1371.1 REV

CHAPTER 2 SECTION 2

(1) *The family or individual has moved to a decent, safe and sanitary replacement dwelling* and has received all assistance and payments to which entitled.

(2) *All possible efforts to trace* a family or individual have failed.

(3) *The family or individual moves to substandard housing* and has refused reasonable offers of additional assistance

in moving to a decent, safe, and sanitary replacement dwelling.

(4) *The business concern, nonprofit organization, or farm operation* has received all assistance and payments to which it is entitled, and has either been successfully relocated or ceased operations.

(5) *The site occupant refuses to accept one of a reasonable number of offers* of accommodations meeting HUD-approved relocation standards. (In the case of continuous refusal to admit a relocation interviewer who attempts to provide assistance, visits the site occupant at reasonably convenient times, and has, whenever possible, given notice of his intention to visit the site occupant, the local agency shall write, telephone, or take other reasonable steps to communicate with the site occupant before terminating assistance.)

2-29. EVICTION. The following policies and requirements relate to eviction from property owned by the local agency.

a. *Policy.* Eviction is permissible only as a last resort. It in no way affects the eligibility of evicted displaced persons for relocation payments. Agency relocation records must be documented to reflect the specific circumstances surrounding the eviction from agency-acquired property.

b. *Reasons for Eviction.* Eviction shall be undertaken only for one or more of the following reasons:

* * *

less any proceeds received from the sale or trade-in of the old equipment (see subparagraph e below); or

(2) *The estimated cost to relocate the old equipment to the new location* (disconnect, cartage, reconnect). The local agency shall obtain necessary bids or estimates to determine the reasonable cost of the move. The cost of obtaining bids or estimates is eligible for inclusion as a program or project cost.

d. *Ineligible Cost.* No payment for direct loss of property may be made for the equipment for which a substitute is allowed.

e. *Equipment Left on Site by Business Concern.* If personal property that the business concern replaced with substitute equipment is not sold or traded in, it must be conveyed to the local agency. In such case, the local agency shall assume full responsibility for the property and dispose of it in the same manner as prescribed in paragraph 6-24g.

6-19. SELF-MOVES.

a. *General.* Section 42.65(d)(2) of the regulations provides for making a relocation payment to a business concern that elects to make a self-move and not submit documentation in support of the costs incurred as long as the amount of the claim does not exceed an acceptable low bid. The business concern may carry out the move by using its own employees and equipment or engage a mover or contractor to handle all or a part of the move.

b. *Notification to Agency.* A business concern that elects to make a self-move should so indicate to the local agency at the time that it submits written notification of its intention to move.

c. *Limitations.*

(1) *The amount of a relocation payment for a self-move* shall not exceed the estimated cost of the

* * *

from which displacement takes place. Examples of this type of operation might be the general practice of law, medicine, or dentistry. If in the opinion of the local

agency the business does not meet Test 1, it is the responsibility of the agency to demonstrate that the business will not suffer a substantial loss of existing patronage.

(2) *Test 2.*

(a) *General Rule.* The business is not part of a commercial enterprise having another establishment which is not being acquired for the project, and which is engaged in the same or similar business.

(b) *Exception.* The sole remaining facility of a business that has been displaced from its principal location shall not be considered as "another establishment" for purposes of Test 2 if, during the two taxable years prior to displacement of the major component of the business, the remaining facility had:

1 Average gross receipts of less than $2,000; *or*

2 Average annual net earnings of less than $1,000.

(3) *Test 3.* During the two taxable years prior to displacement, the business:

(a) Had average annual gross receipts of at least $2,000; *or*

(b) Had average annual net earnings of at least $1,000; *or*

(c) Contributed at least 33-1/3 percent of the average annual gross income of the owners or operators of the business.

* * *

WHAT'S HAPPENING

As a result of the recent changes in Federal legislation, the Neighborhood Development Program (N.D.P.) is no longer in existence. It has been replaced by a City-wide Community Development Program, administered by the former City Demonstration Agency (C.D.A.).

The area in which you live will be affected by the part of the Community Development Program to be administered by the Wilkes-Barre Redevelopment Authority, which involves both acquisition and relocation.

Under Community Development, the relocation and acquisition benefits will not change, but we would like to take this opportunity to explain the procedures.

The first step in acquisition is to obtain two independent appraisals of the property to determine the value. The appraisals are then reviewed by a third appraiser. The owner of the structure then receives a letter and can request an appointment to meet with a Real Estate Specialist for a negotiation.

If the owner is satisfied with the price, he signs an Offer and Agreement of Sale.

Every property owner will still have the right to disagree with our offer and to have the value of his property determined by a Board of View (condemnation). However, due to the nature of this program we will probably put off the condemnation of any

property until we have acquired the properties of all those willing to sell.

At the negotiation, the Authority will offer one price which is the highest and fairest offer that can be made.

Due to the high cost of maintaining a property once it is acquired and because there are no property management funds available under Community Development, no property will be settled until all tenants have vacated. However, we will reimburse the landlord for the rent he would have received had the tenant not been relocated. This reimbursement would not include utility costs or furniture rental.

The Relocation Surveys have been completed; making it a matter of record which units are occupied or vacant and what rents are being charged. The landlords are being cautioned not to occupy these vacant units or increase rentals.

The landlord will be responsible for maintaining his property, as he has in the past, until final closing with the Redevelopment Authority and the Redevelopment Authority will not close until all tenants have been relocated.

The Relocation Specialist will begin to work with the tenants as soon as the owner signs the Offer and Agreement of Sale.

There is no difference in the Relocation Program. All benefits available under the N.D.P. Program are still in effect.

Some of the benefits available are replacement housing payments for owners and tenants, rental assistance, dislocation payments, moving expenses, searching expenses and direct loss of personal property and movable equipment. The details of these benefits will be explained throughly by the Relocation Specialist.

It is imperative to point out that no one should move until notified by a Relocation Specialist from the Redevelopment Authority. If you are aware that the owner has signed an Offer and Agreement of Sale and have a place to relocate but have not been contacted by the Relocation Specialist, you should notify the Redevelopment Authority so your move can be arranged. If you move before being contacted by the Relocation Specialist, there is a possibility that you may lose relocation benefits available to you.

The following people will be working with you on a one-to-one basis in acquisition and relocation:

Ron Hillard, John Wojtowicz and Tom Morrissey.

Any questions you may have concerning this program may be addressed to Gloria Watson, Community Relations Specialist, or Dave Dobson, Project Manager. Mr. Dobson will be coordinating all activities within this project.

All of the staff persons can be reached by telephone at *829-1381* or by stopping into the office at the new Wilkes-Barre Center

39 Public Square

5th Floor

between 9:00 A.M. and 5:00 P.M.

Executive Director
Redevelopment Authority
Wilkes Barre, Penna.

Dear Sir:

This in regards to my meeting with Mr. Morrissey regarding the offer of $38.000.00 for my property 214 East Market Street Wilkes Barre, Penna. I desire to appeal this offer, because I feel it was an unjust offer & appraisal, because they never viewed 214 East Market Street (Keystate Bakery) section in my presence because they viewed on there own before I got there. Also this land to me is classified as two parcels one on Market Street & the other at Amber Lane. I also had to have a structure removed from the lot on Amber Lane. After talking to Mr. Morrissey I feel the M&E appraisal of Keystate Bakery was in there favor. I also put new electrical, New drop ceiling, New walls, New lights now I feel your two appraisals of the building gave credit to Keystate Bakery when I did all the same work.

Maybe this is legal by moving my tenants out before we settle this. My opinion I feel you have a poor code of ethics. In other words your forcing me to sell out with out bringing in appraisers on my behalf. Also maybe I would like to take to the board of view. You know after tenants move out the building becomes shoddy, but is is in your favor.

Seeing that you have no Authorization or 30 days termination of business consent, I protest your forcing me out of business by moving my tenants

In the meantime I must continue paying taxes, heat hot water, electric, water. To be fair and etheial you must also suspend business for the following example Keystate Bakery, Shoe repair shop and others.

Your truly

Joseph A. Fessler

Oct. 14, 1975

Mr. Paul T. Cain
Area Director
Department of Housing and Urban Development
Philadelphia Area Office
Curtis Building
Sixth and Walnut Street
Philadelphia, Penna.

Dear Sir:

This is in regards to my property 214 East Market Street, Wilkes Barre, Penna. which the Wilkes Barre Redevelopment Authority is in the process of taking me to Court Again. Because like before these appraisal are never in my benefit because I am not getting the full benefit and value for my income property. It only come to only a little over three time my income the book says seven so at lest you should be able to come up with Five times. This have been costly lot of extra time plus money for no good reason. I am not entitle to a lot of these benefits which make up the differnce. I spent a lot of money repairing this building which was not lived in for many years. I do all the work and dont get not credit for it. My present income, is $11,470 a year you offer $38,000.00 afetr me remodeling the whole building. New Store front, new wiring, plumbing, Heating plant, paneling and dry wall throughout the building tile foor and wall to wall carpeting. I wish you would get another place for me like you do for a certain few they must be some law that will benefit me. You run me out of business and it take me a year or two to get

back into it. Here I lose all the rents and no benefits because I alway own another place that your laws for you. Enclosed is letter I wrote to other people before but when the leyters get there they start shafed more. I feel I dovere an honest and just price. It looks like your bringing the old west back, no wonder the indians are mad I am in the same situation. If you can do any good for me please help Me.

Sincerely

Joseph A. Fessler

DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
PHILADELPHIA AREA OFFICE
CURTIS BUILDING, 625 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19106

19 NOV 1975

[LOGO]

REGION III
Curtis Building
6th, and Walnut Streets
Philadelphia, Pennsylvania 19106

IN REPLY REFER TO:
3.4CM

Mr. Joseph A. Fessler
RD#1 Trailwood
Wilkes-Barre, Pennsylvania 18701

Dear Mr. Fessler:

This is in response to your letter dated October 14, 1975 concerning the acquisition of your property located at 214 E. Market Street, Wilkes-Barre, Pennsylvania.

As you may be aware, your property is being acquired by the Redevelopment Authority with money that was made available to the City of Wilkes-Barre under the Housing and Community Development Act of 1974.

Since the City of Wilkes-Barre has primary responsibility for the planning and administration of the Community Development Program your letter has been referred to:

Mr. B.J. Gallagher
City Manager

We anticipate that you will be hearing from the City of Wilkes-Barre in the near future.

Sincerely,

/s/ Bernard Tatcher
Bernard Tatcher
Program Manager

NEVER HEARD FROM THE CITY OF WILKES BARRE ALSO HUD COULD OF SANCTION THEM FOR MAKING FALSE NAMES UP AND CORRECT THE FESSLER CASE.

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED,
INSURED AND CERTIFIED MAIL

• SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

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1. The following service is requested (check one):

☐ Show to whom and date delivered---------- 15¢

☐ Show to whom, date, & address of delivery ---------- 35¢

☐ RESTRICTED DELIVERY.
Show to whom and date delivered---------- 65¢

☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery ---------- 85¢

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2. ARTICLE ADDRESSED TO:

[Home Address Omitted]

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3. ARTICLE DESCRIPTION

REGISTERED NO.	CERTIFIED NO.	INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. /s/ [Illegible] DATE OF DELIVERY OCT 24 1975	POSTMARK [STAMPED]
5. ADDRESS (*Complete only if requested*)	
6. UNABLE TO DELIVER BECAUSE	CLERK'S INITIALS

★ GPO: 1975-O-568-047

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH A. FESSLER and ANN FESSLER, his wife, Plaintiffs vs. REDEVELOPMENT AUTHORITY OF THE CITY OF WILKES-BARRES; KEYSTATE BAKERY; ZATCOFF, INC.; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; SECRETARY OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Defendants.	CIVIL ACTION NO. 80-0141 (Filed Feb. 29, 1980)

MOTION TO DISMISS

The Defendant, Keystate Bakery, by its counsel, Hourigan, Kluger & Spohrer Associates, hereby moves the Court to dismiss the above entitled action on the following grounds:

1. The Complaint fails to state a claim against the Defendant, Keystate Bakery, upon which relief can be granted.

2. There is no such legal entity as Zatcoff, Inc., therefore this Court has no jurisdiction over the non entity.

3. The Complaint does not set forth any cause of action against the Defendant, Keystate Bakery.

4. The amount in controversy does not exceed Ten Thousand ($10,000.00) Dollars.

5. Plaintiff has no standing in Court since he has not exhausted his administrative remedies before the Redevelopment Authority of the City of Wilkes-Barre and has not followed regulations of the Department of Housing and Urban Development concerning condemnation and/or relocation disputes.

WHEREFORE, Defendant, Keystate Bakery, respectfully requests that the Court enter an Order dismissing the action.

HOURIGAN, KLUGER &
SPOHRER ASSOCIATES

BY /s/ George A. Spohrer
George A. Spohrer, Esq.

BY /s/ Richard M. Goldberg
Richard M. Goldberg, Esq.
Attorneys for Keystate Bakery
700 United Penn Bank Building
Wilkes-Barre, Pennsylvania
18701

JAMES S. PALERMO
ATTORNEY AT LAW
700 NORTHEASTERN BANK BUILDING
HAZLETON, PENNSYLVANIA 18201

AREA CODE 717
454-5861

October 16, 1975

Hugh F. Mundy, Esquire
21 South Franklin Street
Wilkes-Barre, Pennsylvania 18701

Re: Fessler vs. Redevelopment Authority of the City of Wilkes-Barre
No. 5552 of 1973

Dear Hugh:

I was surprised, but not alarmed, to see that Joe Fessler changed his mind relating to the jury verdict which was entered before Judge Podcasy in his case No. 5552 of 1973, on September 30, 1975.

Enclosed herein please find copy of letter which I received this date from Joe Fessler, along with a copy of my reply to him. You will note that I informed him that I do not see any legal ground for his re-opening the verdict, nor will I participate in any proceedings to do so, and that if he chooses to attempt this useless act, he had better get new counsel for him on this matter.

However, please note that paragraph numbered 3 in his letter of October 12, 1975, indicates that he requests an appeal with the Redevelopment

Authority relating to relocation or loss of business damages in case No. 5555 of 1973. It is my understanding that he also wishes to pursue his administrative remedies through the Redevelopment Authority on Case No. 5552, so please consider this on his behalf as a request for hearing or appeal of both. I am not positive at this point whether I will be representing him relating to this, but I felt obliged to transmit that request in his letter to you.

I do not know the status of your anticipated payment of the balance due to Mr. Fessler, but you will note that I wrote to you concerning this on October 1, 1975, and that interest is accruing in his favor in this matter.

I shall keep you aware of any further developments, particularly my representation of Mr. Fessler so that you will know with whom to deal as his legal counsel.

Thank you for your courtesy and cooperation.

Sincerely yours,

/s/ James S. Palermo
James S. Palermo

JSP:jls

Enclosures

CC: Mr. & Mrs. Joseph A. Fessler
Herbert L. Winkler, Esquire

JAMES S. PALERMO
ATTORNEY AT LAW
700 NORTHEASTERN BANK BUILDING
HAZLETON, PENNSYLVANIA 18201

(AREA CODE 717)
TELEPHONE 454-5861

September 5, 1973

Executive Director
Redevelopment Authority of the
City of Wilkes-Barre
Wilkes-Barre, Pennsylvania 13701

Re: Joseph A. and Ann Fessler

Dear Sir:

This is to inform you that I represent Joseph A. and Ann Fessler concerning their properties which have been acquired by you in Civil Nos. 5552 of 1973 and 5555 of 1973.

It is respectfully requested that you inform me the status of your appraisals relating to the personal property of the Fesslers, and whether you are in a position or need any other information to pay business dislocation damages.

I would appreciate your expediting these matters, or be in touch with me if there is any other information that you need.

Thank you for your courtesy and cooperation.

Sincerely yours,

/s/ James S. Palermo
James S. Palermo

JSP:jl

CC: Mr. & Mrs. Joseph A. Fessler

RD#1 Trailwood
Wilkes Barre, Penna.

30 September 1975

Atty James S. Palermo
700 Northeastern Bank Building
Hazleton, Penna.

Dear Mr. Palmero

Request this be placed in the courts record before my trial That I Joseph A. Fessler request a Non Jury Trial at are meeting 22 September in the court House also that If I couldn't Get a none Jury Trial I ask you to see if I could get the board of view money rather than go to Jury trial. Your letters dated 22 Sept 1975 you attempted to have a non jury trial, but re-development refuse this, also the Judge was not anxious to have it heard this way.

I showed you the Urban Renewal relocation rights and benefits booklet which states either the property owner or the redevelopmen Authority states if an appeal to the board of viewers report is filed, either side may ask for a jury trial. But if no one ask for a jury trial within 15 days of filing of the appeal, then the right of a jury trial has been lost. The common Pleas Court Judge will set the price.

I also request that the relocation allowance and lost of business be brought up at the trial due to no answer from the redevelopment Authority on my other case. I have waited two years and seven Months

already I feel thats enough time for them to make up there mined.

Sincerely yours

Joseph A. Fessler

Ann Fessler

I Atty James Palermo received a copy of this letter 30 Sept 1975

JOSEPH FESSLER
RD#1
WILKES BARRE, PA.

ATTY JAMES PALMERO
700 NORTHEASTERN BUILDING
HAZLETON, PA.

DEAR ATTY PALMERO

WHAT I WOULD LIKE TO FIND OUT FROM YOU ARE YOU GOING TO OBEY ARE CONTRACT WITH YOU OR YOU GOING TO DELAY TILL THE LIMITATIONS RUN OUT ON EVERY THING. YOU GOT YOUR MONEY BUT THERE IS MORE TO BE GOTTEN IN LOSS OF BUSINESS. IWHEN OVER THIS WITH YOU OVER TWO HUNDRED TIMES BUT YOUR DEAF ITHINK YOU BETTER GO TO AN EAR DOCTOR TO GET YOUR HEARING CHECK. ALSO LETTER I WROTE TO YOU SO WHAT I WANT TO KNOWN WHAT YOUR INTENTION ARE.

(1) ARE YOU GOING TO PUT IN FOR LOSS BUSINESS FOR ME.

(2) WHAT IS THE LIMITATION FOR THIS.

(3) WHAT ABOUT A NEW TRAIL.

(4) IWANT AN ANSWER BY THRUSDAY 22 APRIL 1976.

(5) IF YOU DON'T WANT TO DO ANYTHING I WILL BE DOWN TO PICK UP MY FILE THRUDAY 22 april 1976.

MAIL ou 19 APRIL 1976

/s/ Joseph Fessler
JOSEPH FESSLER

Redevelopment Authority of the City of Wilkes-Barre

500 WILKES-BARRE CENTER,
39 PUBLIC SQUARE, WILKES-BARRE,
PENNSYLVANIA 18702/(717) 829-1381

Horace E. Kramer, *Chairman*
Joseph F. Long
Dr. P. J. Wall
Michael B. Rushion
Harold P. Trethaway

Leon E. Case
Executive Director

Donald D. McFadden
Counsel

March 10, 1976

Mr. Joseph Fessler
R. D. #1
Wilkes-Barre, PA 18702

Dear Mr. Fessler:

I have received your letter of March 5, 1976 and wish to clear up the two matters raised in that letter.

One February 17, 1976 at a hearing before Judge Bigelow, you agreed to accept payment for 214 East Market Street. As a result of that agreement, the Judge signed an order to that effect. Since you refused to accept payment, we had no choice but to pay that money into court. There has been no violation of your rights, rather you have chosen to ignore the Judge's order.

Your letter also refers to a grievance hearing with regard to the payment of money into court. Please be advised that a grievance hearing refers only to grievances having to do with relocation payments If you

have a grievance with regard to a relocation payment, a hearing will be held. However, the grievance procedure does not apply to anything having to do with the acquisition of property.

There is one other thing you should know, whenever you hire an attorney and we are informed that that attorney is representing you, ethics demand that we negotiate with that attorney. We cannot bypass the attorney and negotiate with you directly. Please keep this in mind for the future.

Sincerely,

/s/ Richard M. Gelhard
Richard M. Gelhard
Deputy Executive Director

g:h JOSEPH WAS CALLED IN FESSLER AND HIS WIFE WAS NEVER CALLED IN AT ANY SIGNING OF RELOCATION PAPER ALSO MY WIFE IS PART OWNER THIS SHOULD MAKE THIS MULL AND VOID ALSO LAWYER WAS NOT PRESENT AT THE TIME.

/s/ Ann Fessler
ANN FESSLER

No. 09-550

Supreme Court, U.S.
FILED
DEC 1 - 2009
OFFICE OF THE CLERK

In The

Supreme Court of the United States

JOSEPH A. FESSLER and ANN FESSLER, his wife,

Petitioners,

v.

KIRK SAUER COMMUNITY DEVELOPMENT CITY OF WILKES-BARRE; RICHARD GELHARD, Ex Deputy Executive Director – Wilkes-Barre; LEWIS ATTORDO; JOHN G. BRAVACOS, Relocation Area Director, Department of Housing and Urban Development; PAUL CAIN, Ex Area Director of Housing and Director of Housing and Urban Development; ALPHONSO JACKSON, Secretary of Housing and Urban Development,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

SUPPLEMENTAL BRIEF

JOSEPH A. FESSLER
ANN FESSLER
20 Solomon Street
Ashley, Pennsylvania 18706
Telephone: (570) 826-0060

SUPPLEMENTAL BRIEF

THIS IS TO INFORM THE COURT THAT I CHECKED MY BRIEF. THE GENERAL RELEASE I SIGNED ON 1 MARCH 1974 (PET. APP. 50 AND 51) WAS FRAUDULENT BY WILKES-BARRE REDEVELOPMENT RELOCATION DEPARTMENT, WHOSE NAME IS LEWIS ATTORDO, RELOCATION SPECIALIST, BECAUSE MY WIFE'S NAME WAS NOT ON IT: PLUS HER SIGNATURE IS NOT ON IT BECAUSE SHE IS PART OWNER AND OUR LAWYER WAS NOT PRESENT. THIS MAKES THIS NULL AND VOID.

ALSO C. PAUL BRUBAKER, JR., DEPUTY AUDITOR GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, STATED ON PET. APP. 46 & 47 THAT I CAN PAY BACK THE ($892) MOVING AND SEARCHING ($500) LOOKING FOR REPLACEMENT PROPERTIES I WOULD HAVE TO BE REFUNDED TO RELOATION WILKES-BARRE REDEVELOPMENT. I AM WILLING TO PAY THE MONEY BACK AND TO START RELITIGATION ALL OVER AGAIN TO REOPEN THIS CASE AND TO GET A FAIR SHAKE ON THIS MATTER. ON TEST TWO THE REDEVELOPMENT TOOK 31 TENANTS OFF ME. HOW COULD THEY FIT IN THE OTHER BUILDING WHICH HAD 12 TENANTS IN IT ALREADY? TEST 2 SHOULD BE "NO." THIS WAS DONE BY LEWIS ATTORDO AGAIN.

THIS APPENDIX IS SUBMITTED IN CONJUNCTION WITH THE PETITION FOR WRIT OF

CERTIORARI AND SHOULD BE REFERENCED WITH APP. 73-74.

Respectfully submitted,

JOSEPH FESSLER

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

• SENDER: Complete Items 1, 2, and 3. Add your address in the "RETURN TO" on REVERSE.
1. The following service is requested (check one). ☒ Show to whom and date delivered.....15¢ ☐ Show to whom, date & address of delivery .....35¢ ☐ RESTRICTED DELIVERY. Show to whom and date delivered.....65¢ ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery .....85¢
2. ARTICLE ADDRESSED TO: EXECUTIVE DIRECTOR REDEVELOPMENT AUTHORITY WILKES BARRE, PA.
3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	254875	

(Always obtain signature of addressee or agent)

I have received the article described above. SIGNATURE ☐ Addressee ☐ Authorized Agent		
	/s/ J. Powell	
4.	DATE OF DELIVERY 9-4-75	POSTMARK WILKES BARRE, PA SEP 4 1975 USPO
5.	ADDRESS (*Complete only if requested*)	
6.	UNABLE TO DELIVER BECAUSE:	CLERK'S INITIALS

* GPO 1975-O-588-047

Supreme Court, U.S.
FILED
FEB - 8 2010
OFFICE OF THE CLERK

No. 09-550

In The
Supreme Court of the United States

JOSEPH A. FESSLER and ANN FESSLER, his wife,

Petitioners,

v.

KIRK SAUER COMMUNITY DEVELOPMENT CITY OF WILKES-BARRE; RICHARD GELHARD, Ex Deputy Executive Director – Wilkes-Barre; LEWIS ATTORDO; JOHN G. BRAVACOS, Relocation Area Director, Department of Housing and Urban Development; PAUL CAIN, Ex Area Director of Housing and Director of Housing and Urban Development; ALPHONSO JACKSON, Secretary of Housing and Urban Development,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR REHEARING

JOSEPH A. FESSLER
ANN FESSLER
20 Solomon Street
Ashley, Pennsylvania 18706
Telephone: (570) 826-0060

RECONSIDERATION REGARDING CASE TO SUPREME COURT OF UNITED STATES

THIS IS TO INFORM THE COURT THAT WILKES BARRE REDEVELOPMENT AUTHORITY STARTED THESE COURT ACTIONS BY CONDEMNATION OF ALL MY PROPERTIES AT 289, 291, 291½, 312, 314, REAR 312 EAST MARKET STREET 16 AND REAR 16 SOUTH GRANT STREET 214 EAST MARKET STREET ALL OF WILKES BARRE, PA. WHY ITS BEEN IN THE COURTS FOR THE LAST 35 YEARS FOR RELOCATION BENEFITS BECAUSE WILKES BARRE REDEVELOPMENT AND HOUSING AND URBAN DEVELOPMENT PHILADELPHIA COURTS NEVER FOLLOWED RULES AND REGULATION ACCORDING TO HUD HANDBOOK OR MANUAL. I RETIRED FROM THE NAVY AFTER 24 YEARS OF ACTIVE DUTY AND I HAD TO FOLLOW ALL THE RULES. I FILED ALL MY APPEALS ACCORDING TO HUD HANDBOOK AND MANUAL. THIS WAS ALL GIVEN TO THE COURTS. ENCLOSED IS A COPY OF LETTER FROM PAUL CAIN HUD AREA DIRECTOR OF PHILADELPHIA DATED JANUARY 15 1976 ABOUT MY RELOCATION APPEAL. HE STATED I COULD TAKE JUDICIAL REVIEW THROUGH THE COURTS. THERE ARE ONLY TWO COURTS IN THE SYSTEM. I COULD TAKE IT TO PENNSYLVANIA, FEDERAL COURTS WHICH I DID FOR THE PAST 35 YEARS I TOOK IT TO EVERY COURT PENNSYLVANIA FEDERAL COURTS SUPREME COURT THEY ALL FAIL TO HONOR

PAUL CAIN LETTER REGARDING REVIEW BY THE COURTS. I KNOW NO FOREIGN COURT WOULD ACCEPT IT. ALL THE ATTORNEYS, COURTS, SHOULD HAVE LET ME KNOW THAT THE LETTER WAS NO GOOD FOR AN APPEALS IN THE COURT WOULD HAVE SAVED ME TIME AND THOUSANDS OF DOLLARS OF LEGAL FEES. I WISH THE SUPREME COURT WOULD LET ME KNOW THIS WHEN I AM BEING REJECTED BY THEM. ACCORDING TO WILKES BARRE NEWSPAPER THEY HAD 2 MILLION DOLLARS LEFT OVER FROM THE PROJECT. THEY USED THE MONEY FOR OTHER PROJECTS IN THE CITY.

I FOUND A NEWSPAPER I HAD FROM THE TIMES LEADER, WILKES BARRE, PA DATED JANUARY 28 1990 THAT CITY OF SCRANTON DIDN'T FOLLOW THE RULES FOR A PROJECT BY CONDEMNATION MAKING UP THEIR OWN RULES THEY GOT CAUGHT AND HUD CAME IN AND CLOSED THE PROJECT DOWN – MAKE THEM START OVER AGAIN BECAUSE THEY ARE VIOLATING FEDERAL LAW SECTION OF THE UNIFORM RELOCATION ASSISTANCE AND REAL ESTATE ACQUISITION POLICIES ACT 1970. THIS IS THE SAME THING WILKES BARRE REDEVELOPMENT AND HUD DIDN'T DO TO ME. I INFORMED HUD AND WILKES BARRE REDEVELOPMENT ABOUT IT BY CERTIFIED LETTERS EVEN HAD ONE OF HUD INSPECTORS OVER, THAT IS WHY NONE OF MY LAWYERS WANTED TO TAKE

IT TO COURT REGARDING RELOCATION BENEFITS. I FILED SUIT ON THEM IN THE FEDERAL CASES 1987, 1989. I WOULDN'T WANT THEM TO BE SHUT DOWN – ONLY FOLLOW THE RULES BY HUD HANDBOOK.

I HAVE BEEN USING COMMON SENSE LAW HOPING THE SUPREME COURT WOULD HONOR MY APPEAL REGARDING THIS MATTER. I WOULD LIKE MY DAY IN COURT REGARDING THIS MATTER.

JOSEPH FESSLER

CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

JOSEPH FESSLER

DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
PHILADELPHIA AREA OFFICE
CURTIS BUILDING 1 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19106

IN REPLY REFER TO:
3-4CM

(Filed Jan. 15, 1976)

Mr. Joseph A. Fessler
R.D. #1 Trailwood
Wilkes-Barre, Pennsylvania 18701

Dear Mr. Fessler:

Subject: Request for Hearing on Eligibility
for Relocation Payment

We have reached a determination on your appeal for a hearing as a result of denial of a Relocation payment by the Wilkes-Barre Redevelopment Authority.

We regret to inform you that we must agree with the Redevelopment Authority in denying your claim for payment under Section 601A(b)(3) of the Pennsylvania Eminent Domain Code. One of the requirements for eligibility under this section is that the business being displaced is not part of a commercial enterprise having at least one other establishment engaged in the same or similar business which is not being acquired. Your file, which we received from the Redevelopment Authority, reveals that you own a similar business at 289-291 E. Market Street.

If you are not satisfied with this decision you have the right to seek judicial review through the courts.

Sincerely,

/s/ Paul T. Cain
Paul T. Cain
Area Director

[Copy in Petition Filed in Luzerne County Court 19 Feb. 1976] never heard from them.